

## Criminal Justice

**The Criminal Justice Challenge:  
An Overview**

**Perspectives on Sentencing**

*Vincent L. Broderick*

**State Sentencing Commissions  
and Guidelines**

*Kay A. Knapp*

**Policing and Effective Law Enforcement**

*Patrick V. Murphy*

**The Community Corrections Response  
to Crime**

*Warren I. Cikins*

**States Expand Crime Prevention  
and Law Enforcement Efforts**

*Nolan E. Jones and Gwen A. Holden*

**Criminal Justice Teamwork**

*Vivian E. Watts*





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# A View from the Commission

U.S. Attorney General Janet Reno, in testimony at her confirmation hearing, expressed the view that government intervenes much too late into the lives of troubled children. A realistic strategy to combat crime, she indicated, must place greater emphasis on prevention, early intervention, and treatment.

Reno's testimony reflected what a growing number of county officials have come to recognize—that the best strategy to deal with crime is to try to prevent it from happening.

Many counties have long realized that much of society's effort comes too late, after problems have become entrenched and critical. The attorney general put it bluntly when she indicated that it makes no sense to wait until a child is 12 years old or has dropped out of school before action is taken.

The magnitude of the problem is staggering. A recent report of the Carnegie Foundation found that one quarter of pregnant women received no prenatal health care and that, on average, 35 percent of children in kindergarten were not prepared to start school because of preventable health problems or inadequate stimulation during preschool years.

The National Commission on Children also concluded that, "The longer children and parents experience neglect, deprivation, and failure, the more difficult and costly the remedy. Family planning, prenatal care, immunizations, family support, and early childhood education can reduce later and far greater expenses for neonatal intensive care, special education, drug treatment, welfare and prisons."

In my judgment, the major challenge facing local governments in the future will hinge on how effectively we direct more of our resources to early intervention and prevention.

In Fresno County, California, a program operating in ten schools—

mostly elementary—seeks to help at-risk children and their families. The students are referred to an interdisciplinary school team, which develops an individual service plan.

According to an evaluation of the Fresno program as reported in *The Future of Children*, the results have been impressive. "Of the approximately 60 high-risk children whose cases were managed in elementary school and who are now of high school age, none has dropped out or become a teenage parent, and only three have entered the juvenile justice system."

Pinellas County, Florida, has been involved in numerous effective and creative initiatives preventing juvenile delinquency, violence, and substance abuse. Some of the prevention programs are coordinated and funded through the Pinellas County sheriff's office, including a full service, countywide Drug Abuse Resistance Education (DARE) program in elementary schools, designated youth services, and an extensive school resource officer program in middle schools. Pinellas County deputies also work with prevention and education agencies as well as with special recreation programs.

Many people in Pinellas County think that children, families, neighborhoods, schools, helping agencies, and others can work together for the good of all. They have applied to the Pew Charitable Trusts for funds to help do just that. The local effort is part of a statewide effort. Florida was among 14 states invited to apply for the funds, and is one of five still eligible to receive a grant. St. Petersburg is one of two communities in Florida chosen to participate in planning a new system of social services. The idea is to develop health, education, and social services, to be delivered primarily through a system of family resource centers designed by residents to meet the needs of their neighborhoods.

To promote this concept of "front-end investment" and family support nationwide, last year, NACo helped secure Title V, a new section in the *Juvenile Justice and Delinquency Prevention Act*. The objective of Title V is to empower the community via a network

of countywide policy boards whose focus is prevention. The boards are composed of representatives of the schools, the business community, government agencies, citizens groups, and the private nonprofit sector.

In my view, the major hope for prevention will depend on the leadership of politicians. To develop effective leadership, politicians need a management framework to generate options. For years, most justice research has been aimed at practitioners and has ignored the role of elected policymakers. Until the ACIR study, there was little information and research on the roles and functions of elected policymakers in criminal justice—even though general government officials spent \$74 billion for justice services in FY 1990.

General government elected officials need to be involved because they possess a unique potential to reform the justice system. They are able to manage and coordinate multiple systems (such as health and human services) to bring about change. We know, for example, that large numbers of people in the justice system—such as the mentally ill in jail—are there largely because of breakdowns in the health and human service systems.

In addition to their major responsibilities in the justice system, county governments are also the chief public sector providers of health, mental health, and social services. Thus, they are in a unique position to bring about change.

The new ACIR study provides important analysis and recommendations to assess some central questions: What do "general government" politicians do in criminal justice? How can they do it better? How can they work better together?

By providing better answers to these questions we will advance our efforts to achieve collaboration, bringing us nearer to crime prevention.

Barbara Sheen Todd  
Commissioner  
Pinellas County, Florida  
and NACo First Vice President

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## Commission Appointments

Mayor Robert M. Isaac of Colorado Springs and State Senator Samuel B. Nunez, Jr., of Louisiana were reappointed to two-year terms on January 20, 1993. Kansas Senate President Paul Bud Burke, U.S. Sen. Byron L. Dorgan (ND); and Philadelphia Mayor Edward G. Rendell were appointed to the Commission for two-year terms on January 20, 1993.

Paul Bud Burke was elected to the Kansas Senate in 1975 and has presided as president since January 1989. His committee assignments include Organization, Calendar and Rules Legislative Coordinating Council, Interstate Cooperation, Committee on Commerce, Transportation, and Utilities Legislative Budget. He has held leadership positions with the National Conference of State Legislatures, Council of State Governments, NCSL Foundation for State Legislatures, United States Trade Commission, and the Commission on United States-Russian Relations.

Byron L. Dorgan was elected to the U.S. Senate in 1992 after serving more than two decades as a North Dakota state official and in the U.S. House of Representatives. He has

worked to strengthen the farm program for family farmers and has supported legislation for rural jobs and economic development. In the Senate, he serves on the Commerce, Governmental Affairs, Joint Economic and Indian Affairs committees. He was a member of the House Trade Subcommittee and the Ways and Means Committee.

Edward G. Rendell serves as the 121st mayor of the City of Philadelphia. He served as district attorney in the city for two terms before his successful campaign for mayor in November 1991. He was featured in a recent issue of *Governing* for his innovative policies that helped restore fiscal stability to the city.

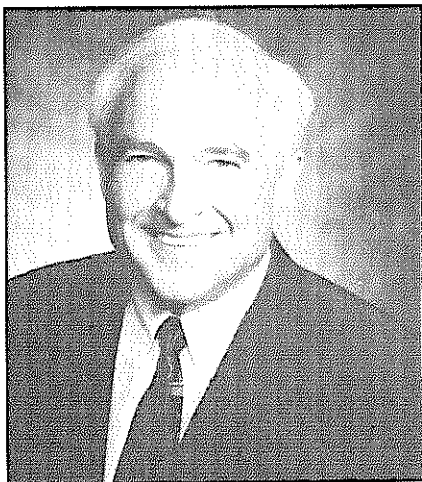
## ACIR Hosts Russian Constitutional Commission

On January 27-28, ACIR hosted the chairman, executive secretary, and two other members of the Russian Parliament's Constitutional Commission for a two-day workshop on federalism and intergovernmental relations. The members of the Constitutional Commission were brought to the United States under the auspices of the American Bar Association's Central and East-

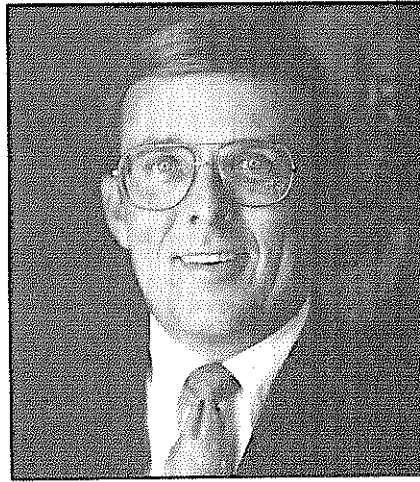
ern European Law Initiative, directed by Malcolm L. Russell-Einhorn.

U.S. participants included Roland Burris, attorney general of Illinois; Frank Ducheneaux of Ducheneaux, Gerard & Associates; Professor Daniel J. Elazar of Temple University, an ACIR Commissioner; Justice Jack Hightower, Supreme Court of Texas; John Kincaid, ACIR executive director; Justice Elizabeth Lacy, Supreme Court of Virginia; Professor Earl Maltz, Rutgers University Law School; Professor Herman Schwartz, Washington College of Law, American University; U.S. Representative Craig Thomas of Wyoming, an ACIR Commissioner; and Justice Robert Utter, Supreme Court of Washington.

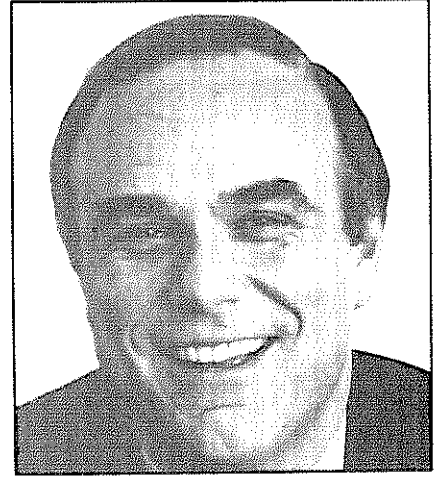
The members of the Constitutional Commission said that federalism is the single most important constitutional issue facing the Russian Federation. They expressed concern about the unity and stability of the federation in the face of many ethnic, political, and economic forces set loose by democratic reform. The ability of the national government to implement federal law in the constituent jurisdictions of the federation and the allocation of functions and revenue powers were also seen as matters of



Paul Bud Burke



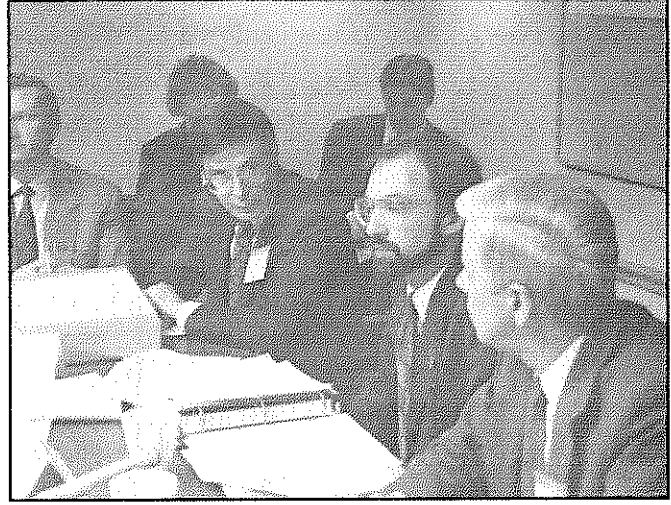
Byron L. Dorgan



Edward G. Rendell



At table, from left: Daniel J. Elazar, Temple University and ACIR Commissioner; Justice Jack Hightower, Supreme Court of Texas; Justice Robert Utter, Supreme Court of Washington.



From left: Sergey N. Ivanov, chairman, Constitutional Commission; John Glad, interpreter; Oleg G. Rummyantsev, executive secretary, Constitutional Commission; and John Kincaid, executive director, ACIR.

great importance in framing a new constitution for Russia. The workshop participants discussed these and other issues as they reviewed sections of the draft constitution then developed by the parliamentary commission.

### ACIR Meets with EPA

Following up on ACIR's recent report *Intergovernmental Decisionmaking for Environmental Protection and Public Works* (November 1992) and a panel discussion by members of EPA's Local Government Advisory Committee at the Commission's December 1992 meeting, Chairman Robert B. Hawkins, Jr., and ACIR staff members met with high-level staff members of EPA.

On January 20, the Commission delivered a letter to incoming EPA Administrator Carol Browner, stressing the need for the new administration to give high priority to the recommendations of the Local Government Advisory Committee. That Committee's recommendations urge greater flexibility for local governments in complying with EPA mandates and stress the use of good science, prioritization for maximum reduction of environmental risks, consideration of local conditions, increased local involvement in EPA decisionmaking, and federal financial assistance.

On February 23, ACIR Executive Director John Kincaid and Government Policy Research Director

Bruce D. McDowell met with Ann Hardison, EPA acting chief of staff, to draw attention to these priorities and to offer ACIR's assistance with infrastructure strategies and other issues of mutual concern.

### ACIR Informs VP's Performance Review Team

ACIR has sent recommendations from 20 of its recent reports to Vice President Albert Gore's team charged with reviewing the performance of federal agencies. The submissions included recommendations on:

- Federal regulation of state and local governments;
- Federal grant reform;
- Federal infrastructure strategies;
- State and local involvement with the Federal Geographic Data Committee;
- Intergovernmental governance of water resources;
- Criminal justice and crime prevention;
- State and local taxation of interstate mail order sales;
- Medicaid reform; and
- Protecting appropriate roles for state regulation of banking, and telecommunications.

### A Federal Infrastructure Strategy

ACIR's work with the U.S. Army Corps of Engineers, to assess and recommend actions related to a federal infrastructure strategy, has begun its third and final phase. This phase comes as the White House economic council is launching an infrastructure working group.

In earlier phases, ACIR wrote issue papers and published a report entitled *Toward a Federal Infrastructure Strategy*. The report followed a series of workshops involving more than 70 organizations representing federal, state, and local governments, as well as public works providers, research and advocacy groups, and other relevant groups.

The final phase of this effort consists of six task forces focused on specific components of a successful infrastructure strategy. Each task force will develop a set of principles and guidelines to promote consistent federal actions across departments and agencies. The respective subject areas of these task forces include:

- Using performance-based needs studies, performance monitoring, and investment budgets to raise the productivity of infrastructure projects;
- Improving and expanding the use of cost-benefit analysis in selecting projects having the greatest economic advantage;

- Improving maintenance through better management, accounting, and public reporting of deferred maintenance to help minimize long-term costs;
- Mitigating the federal regulatory "drag" on infrastructure programs by using performance-based techniques, markets, negotiated rulemaking, and the flexibility to apply regulations in the most efficient and effective manner according to local circumstances;
- Streamlining environmental permitting processes to help reduce overall infrastructure development costs and time delays while enhancing environmental protection; and
- Finding adequate, reliable, and affordable revenues to support needed infrastructure.

Each task force will meet three times between April and June. A final plenary session is scheduled for late July. The increasing national attention on infrastructure is expected to make the work of these task forces important and timely.

### Japanese Intern Examines Fire Services

This past winter, ACIR hosted Takashi Sawada, a Japanese government intern, for the final three months of a year-long internship in the United States preparing him for assignments in Japan's Ministry of Home Affairs. Sawada came to ACIR from a similar internship at the U.S. Conference of Mayors, continuing his study of fire services in the United States. At ACIR, he focused on federal mandates that affect local fire departments and volunteer fire companies. The mandates examined were fair labor standards, age discrimination in employment, sex discrimination in employment, and emergency planning for hazardous materials.

### ACIR Panel at Corrections Conference

ACIR has developed a panel session on "The Role of Politicians in a Changing Correctional Environment" for a major conference on

community corrections to be held in Tampa, May 23-26, 1993. The panel will be moderated by Barbara Sheen Todd, an ACIR member and Pinellas County Commissioner.

Vivian Watts, a former state legislator and cabinet member from Virginia who authored ACIR's 1993 report *The Role of General Government Elected Officials in Criminal Justice*; and Matthew Tansey, chief analyst with the Florida ACIR.

The conference is being cosponsored by the Council of State Governments, the American Probation and Parole Association, the Florida Governors' office, and the Florida Department of Corrections.

### GIS Group Adopts Partnership Statement

Thirty-five representatives from nine national organizations representing state and local governments have been meeting under ACIR auspices since December to develop ways for state and local governments to become more fully involved in the activities of the Federal Geographic Data Committee (FGDC). On April 23, the group adopted a formal statement for transmittal to FGDC.

The statement recommends a continuing process and specific tasks to be undertaken cooperatively to enhance the nation's geographic data resources at an affordable cost.

The participating organizations are Council of State Governments, International City/County Management Association, National Association of Counties, National Association of Regional Councils, National Conference of State Legislatures, National Governors' Association, National League of Cities, National States Geographic Information Council, and U.S. Conference of Mayors.

### Staff Briefs Virginia ACIR on Drought Planning

Bruce McDowell, ACIR's director of Government Policy Research, and Vivian Watts, ACIR's consultant on a U.S. Army Corps of Engineers' drought planning case study in Virginia, briefed the Virginia ACIR in Richmond on April 6, 1993. Water

supply in Virginia is primarily a local responsibility. Most of the water is in the western part of the state, however, while most of the people are now located in the east. Tidewater cities are experiencing water shortages, and no regionwide drought contingency plans exist in that part of the state. In addition, state law does not provide for reallocations of water within the state.

These issues have come to light from a Corps of Engineers' study of the James River in Virginia, which is part of the national drought study nearing completion by the Corps.

### Short Course on Clinton Federalism

ACIR will host a short course on "The Clinton Administration and the Prospects for Reinventing Federalism." The course is sponsored by the Organized Section on Federalism and Intergovernmental Relations of the American Political Science Association. The course will involve briefings on the federalism initiatives of the Clinton administration as they relate to the administration's mandates for change: rebuilding the economy, reducing the federal deficit, investing in the nation's infrastructure, providing affordable, universal health care, reforming welfare, educating America, and greening the market. The course will be held at ACIR from 12:00-5:00 p.m., September 1, 1993. Registration, which is due by August 1, is \$35 per person for APSA Federalism Section members and \$45 for non-members. To register, please contact: Prof. Stephen L. Schechter, Department of Government, Russell Sage College, Troy, NY 12180; phone (518) 270-2363; FAX (518) 271-4545.

### ACIR Staff Changes

*Philip M. Dearborn*, former vice president at the Greater Washington Research Center, has joined the staff as director of the Government Finance Research section.

*Paula D. Gordon* has joined the staff as a senior analyst. She was formerly a staff officer, Office of Public Liaison, U.S. Environmental Protection Agency.

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# The Criminal Justice Challenge: An Overview

**T**he responsibility and the authority to address many criminal justice and crime prevention issues lie with the chief elected officials of general government—mayors, county chief executives, governors, state legislators, members of city councils and county boards, as well as the president and the Congress. First and foremost, legislators enact the laws that define crimes and prescribe punishments. The constitutional balance of powers also gives chief executives and lawmakers the responsibility to hold criminal justice officials accountable for efficient, effective, and responsive performance.

General government officials can exercise this responsibility by using their powers to approve budgets and set personnel levels, to appoint correctional and police agency heads, and to enact legislation or adopt executive policies that govern criminal justice procedures and establish program emphasis. Elected officials also have ready access to the public to build support for prevention and foster citizen involvement.

However, some elected policymakers are not adequately informed about the complexities of the criminal justice system. Their lack of a broad context for decisionmaking can make them vulnerable to strong public pressure for immediate action, whether or not such action makes sense in the long run. In part because of these poorly focused reactions, as well as lack of real change in criminal activity, criminal justice has become a serious problem for municipal, county, state, and federal governments.

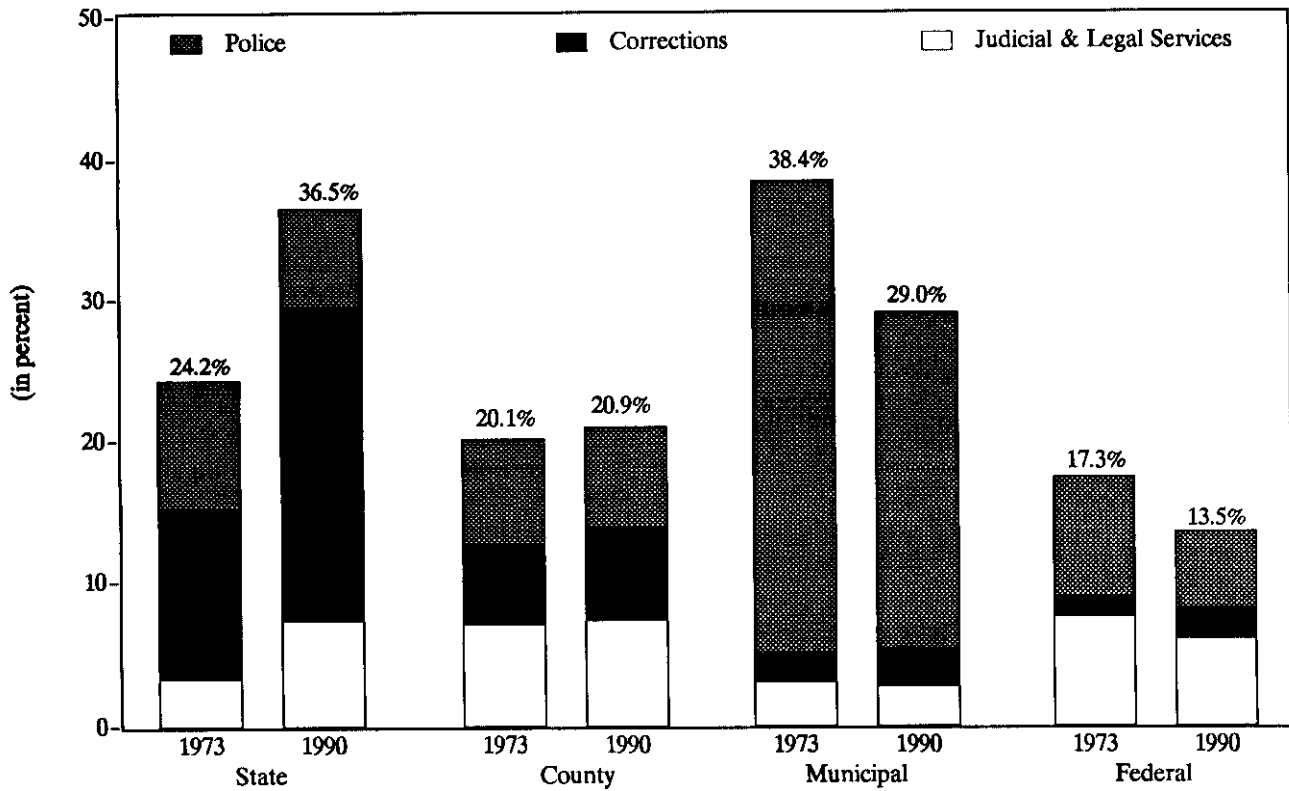
## Spending

Governments in the United States spend over \$70 billion a year on criminal justice, and, since the mid-1970s, criminal justice expenditures have risen faster than any other area of state and local government spending. Between 1973 and 1990, state own-source spending on criminal justice increased 759 percent; county, 490 percent; municipal, 330 percent; and federal, 345 percent (see Figure 1).

Rapid growth has affected most parts of the criminal justice system significantly reduced the money available for more politically popular programs, and created tension when intergovernmental funding does not increase or other governments do not meet their traditional responsibilities (e.g., a local jail backlogged with felons awaiting transfer into overcrowded state prisons). Major areas of increased government spending include:

- State own-source criminal justice spending reflects prison growth, increased state assistance to local governments, and merger of local courts into many state systems. State taxes now fund 36.5 percent of criminal justice expenditures, compared to 24.2 percent in 1973 when municipal spending on police and federal assistance were more dominant.
- County own-source funding has been driven mainly by jail growth, although many counties still bear significant court costs. Many urbanized counties also fund crime prevention programs.
- More modest municipal funding growth masks significantly higher increases for police in large cities. This increase also does not include expenditures to prevent crime, such as street lights, recreation programs, and social services.
- Total federal criminal justice funding increases were affected by two opposite trends. A large drop in federal aid to state and local governments was offset by recent cost increases due to federal sentencing reform and more drug crimes being tried as federal offenses. From 1985 to 1990, direct

**Figure 1**  
**Own-Source Funding, by Government, as a Percentage of Total Criminal Justice Spending, 1973 and 1990**



Source: ACIR computation from U.S. Department of Justice, Bureau of Justice Statistics, *Justice Expenditure and Employment in the U.S., 1990*.

criminal justice expenditures by the federal government grew almost as much as direct state criminal justice expenditures, making the federal government even less responsive to state, county, and municipal claims for restored intergovernmental funding.

**Governmental Responsibility**

Most criminal justice responsibility rests on state and local officials. State-local systems of criminal justice prosecute 94 percent of all serious crimes (felonies), county jails hold most persons detained on state or federal felony charges, state prisons hold 92 percent of the total prison population, and state and local governments spend 87.4 percent of all criminal justice funds.

However, the federal government's influence on criminal justice has been expanding. As a result of several historic developments, starting with Reconstruction, through Prohibition, increased interstate travel and communication, the emergence of crime as a presidential campaign issue in 1964, and passage of five major anticrime bills in the 1980s, more than 3,000 acts are defined as federal crimes. In addition, federal court orders have mandated significant expenditures to correct conditions in prisons in 45 states and in one-quarter of all local jails holding more than 100 people.

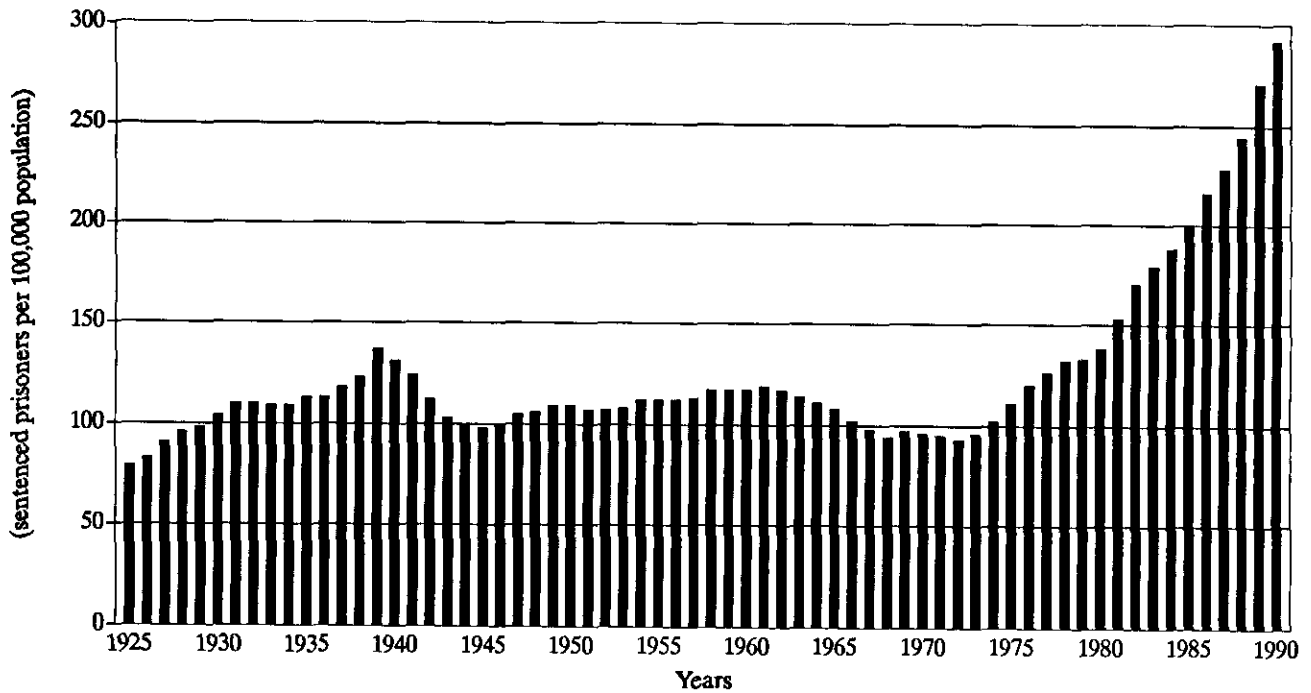
In contrast, federal assistance for state and local law enforcement dropped from 27 percent of federal justice spending in 1973 to only 7 percent in 1990. Yet, state and local officials must produce most of the results that the public assumes will come from well-publicized federal anticrime initiatives, because the federal criminal justice system does not have to—and, in fact, does not—accept jurisdiction over most “street crimes,” even if a federal law covers the offense. Tougher federal sentences also add political pressure on state officials to enact similar increases.

**Criminal Justice Effectiveness**

Between 1973 and 1990, the percentage of the U.S. population in prison more than tripled (see Figure 2). Increased crime did not drive this growth. As depicted in Figure 3, prison growth, accompanied by similar increases in most other criminal justice agencies, resulted from actions taken by all parts of the criminal justice system. More arrests (stemming from population growth, reported crime, and stronger law enforcement) account for only about one-third of the growth. The remainder reflects tougher sentencing laws combined with prosecutorial and judicial discretion leading to increased imprisonment. More parole and probation revocations also have added to prison growth.

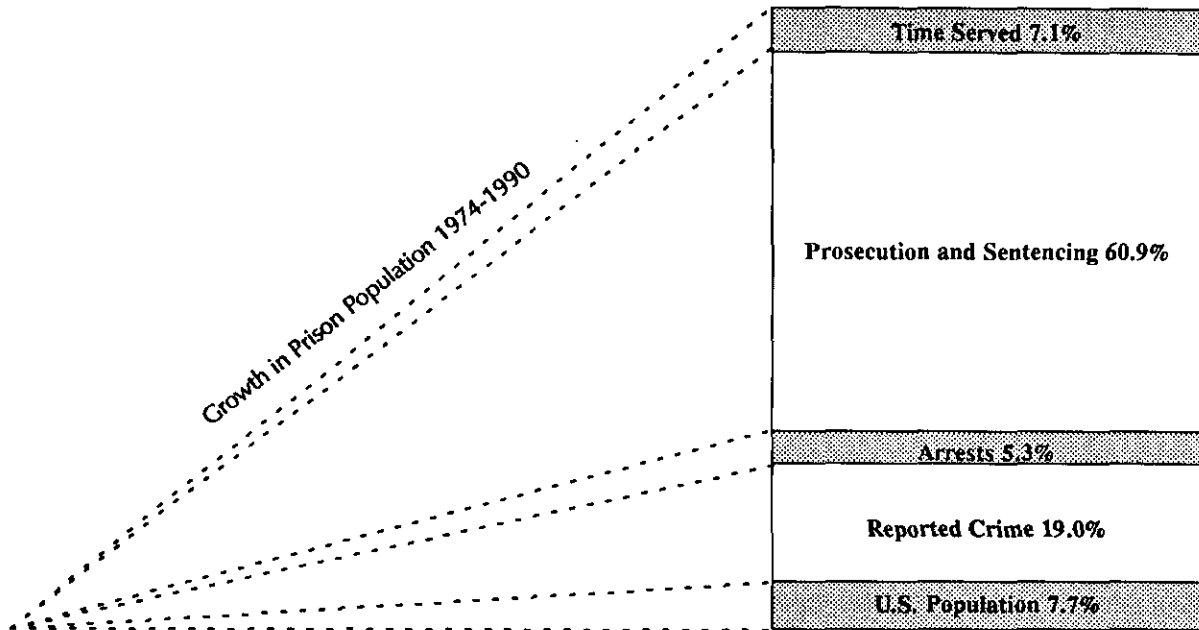


**Figure 2**  
**Sentenced Prisoners in State and Federal Institutions, 1925-1990**



Source: U.S. Department of Justice, Bureau of Justice Statistics, *Sourcebook of Criminal Justice Statistics*, 1990.

**Figure 3**  
**Factors Contributing to Criminal Justice System Growth, 1974-1990**



Source: U.S. ACIR, *The Role of General Government Elected Officials in Criminal Justice*, 1993, p. 11.

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Despite efforts to fund this growth, the United States entered the 1990s with overloaded courts, prisons, and jails; probation and parole caseloads that are double previous levels; continuing budget pressures; and rising rates of violent and juvenile crime. Furthermore, many criminals are continuing to commit crime longer:

- The average age at arrest is 29.
- Nearly 60 percent of jail populations are over age 25, compared to half in 1983.
- Some 23 percent of state prison inmates are over age 35, compared to 14 percent in 1979.

#### Prevention

Longer criminal careers underscore the fact that changes in criminal justice systems alone will not reduce criminal activity significantly. By the time police and sheriffs' departments, prosecutors, public defenders, judges, jailers, probation officers, and prison administrators get involved, the principal contribution they can make to controlling the cost of fighting crime is to be more efficient.

Reducing crime requires dealing with prevention efforts to address the facts that:

- Approximately 60 percent of prison inmates are school drop-outs.
- Over half of prisoners admit they were under the influence of alcohol or drugs at the time of their crime.
- Many inmates report histories of child abuse.
- In 1986, less than 40 percent of prisoners earned more than \$10,000 in the year before their arrest.

Prevention programs also must address:

- The effect of negative adult behavior on new generations; and
- The fact that most crime occurs in big cities and highly urbanized counties. (In 1989, cities of over one million population reported 80 percent more crime and three times more violent crime per person than the national average. Cities between 50,000 and one million population reported rates at least 50 percent higher.)

Current efforts, such as community policing, are recognizing that private and government action needs to support people in areas heavily hit by crime to strengthen social structures, maintain sound civic values, work with law enforcement, and assert individual responsibility.

Many offenders have needs that should be addressed simultaneously by the complementary actions of multiple agencies, such as adult education, drug treatment, public housing, and parole supervision, but the responsibility for these programs is dispersed among municipal, county, and state governments and independent school districts. Furthermore, inmates and juveniles who start programs in correctional institutions often cannot continue in similarly

focused programs outside because general government agencies resist taking offenders, programs are not coordinated, and/or there is no room in the available programs.

In addition, local governments often resist policies to place felons in community programs instead of state prisons if the state does not finance the programs. Finally, citizen resistance to having offenders in the community makes it difficult to focus remedial programs on first-time offenders to prevent them from becoming career criminals. Only the elected officials of general government have the authority to reach across all the necessary public agencies and programs and focus them on crime prevention.

#### Reducing Criminal Justice Costs

At the same time, government officials must continue to meet criminal justice costs driven by past prevention failures and system imbalances. In particular, there are two areas where funding has not kept pace with growth and created added costs elsewhere in the justice system.

**Community Corrections.** In 1977, over 17 percent of correctional expenditures were for probation and parole; by 1990, this had dropped to 11 percent. Specifically, from 1985 to 1988, probation and parole personnel increased at only half the rate of the number of offenders in those systems; hence, reduced supervision and programming have been accompanied by increased revocations and, starting in 1987, less use of probation as a sentencing option. These effects are increasing the prison portion of correctional budgets even further.

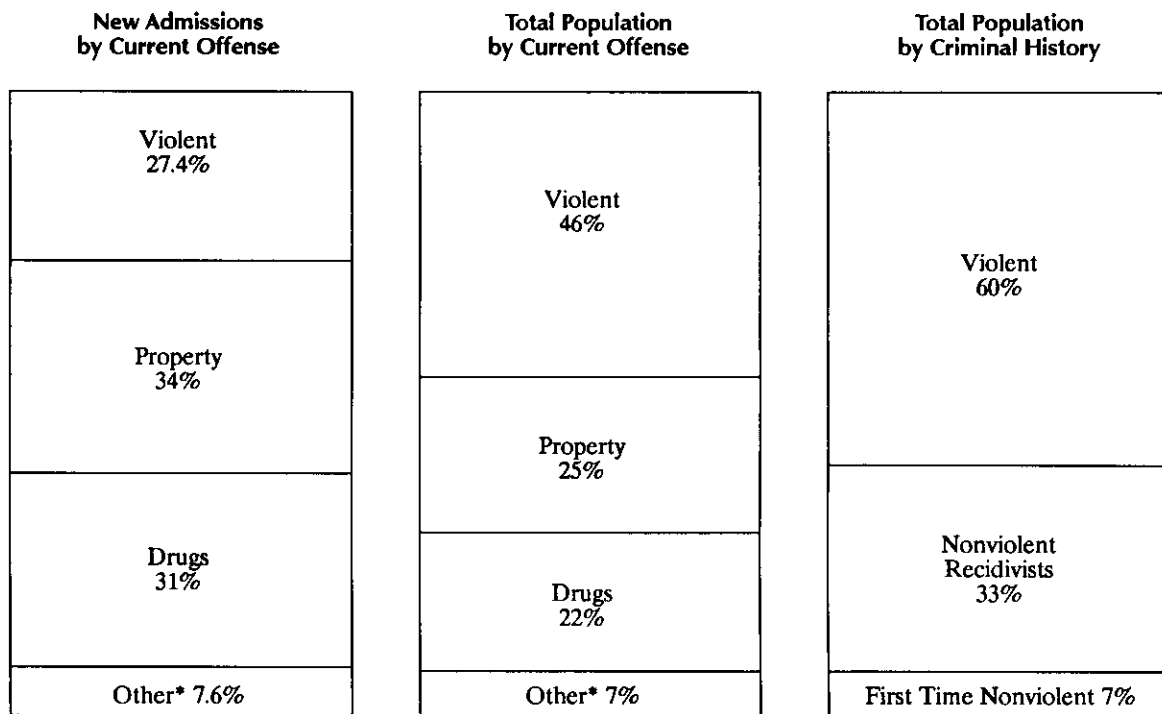
**Court-Related Funding.** Felony case filings in state courts increased over 8 percent annually from 1984 to 1989, while judicial and prosecutor personnel increased approximately 3 percent annually. Because speedy trial requirements apply only to criminal cases, lack of resources has produced lengthy delays in hearing civil cases. In addition, where public defense funding has not kept pace, inadequate representation increases prison and jail populations.

Lack of community supervision resources is particularly critical for proposals that large numbers of prison inmates can be released. Over 90 percent of misdemeanants and two-thirds of felons are serving their sentences in their communities. Because community corrections is used heavily for misdemeanors and minor felonies, further expansion must focus on adequate staffing for programs to address more serious, but not yet career, criminal behavior.

Furthermore, although prison populations can be reduced, it must be recognized that large numbers of state prison inmates are not nonviolent petty criminals. This assumption is fostered by those who look only at the current offense rather than the criminal history of people in prison and/or confuse the large number of white-collar criminals convicted under federal laws with the high number of violent crimes prosecuted by state courts.

For example, whereas only 27 percent of the people admitted to state prisons in 1991 were sentenced for a violent offense, 60 percent of all inmates in state prisons had been convicted of a violent crime at least once (see Figure 4). The difference stems from the fact that serious

*Figure 4*  
**1991 State Prison Populations**



Source: ACIR computation from U.S. Department of Justice, Bureau of Justice Statistics, *Prisons and Prisoners in the United States*, April 1992

offenders serve longer sentences, and some of those currently serving time for a nonviolent offense have violent criminal histories. Furthermore, over half of the nonviolent recidivists were in prison on at least their fourth conviction. (Drug offenses are categorized as nonviolent.)

Because there are significant variations among the states in the use of imprisonment in relation to reported crime rates, arrests, and use of community sentences, public policy considerations will vary in deciding what proportion of a state's prison inmates can be placed more cheaply and equally effectively in nonprison correctional programs and/or serve reduced sentences. Nevertheless, the experience of states using early release of all but the most serious offenders to relieve prison overcrowding indicates that a 10 to 15 percent reduction in prison populations is possible, without any appreciable increase in criminal activity, through shorter sentences and use of community correctional supervision and programs.

### Improving the System

Rational public policy change depends on building consensus around good information. This prescription presents three hurdles to officials working for change in criminal justice:

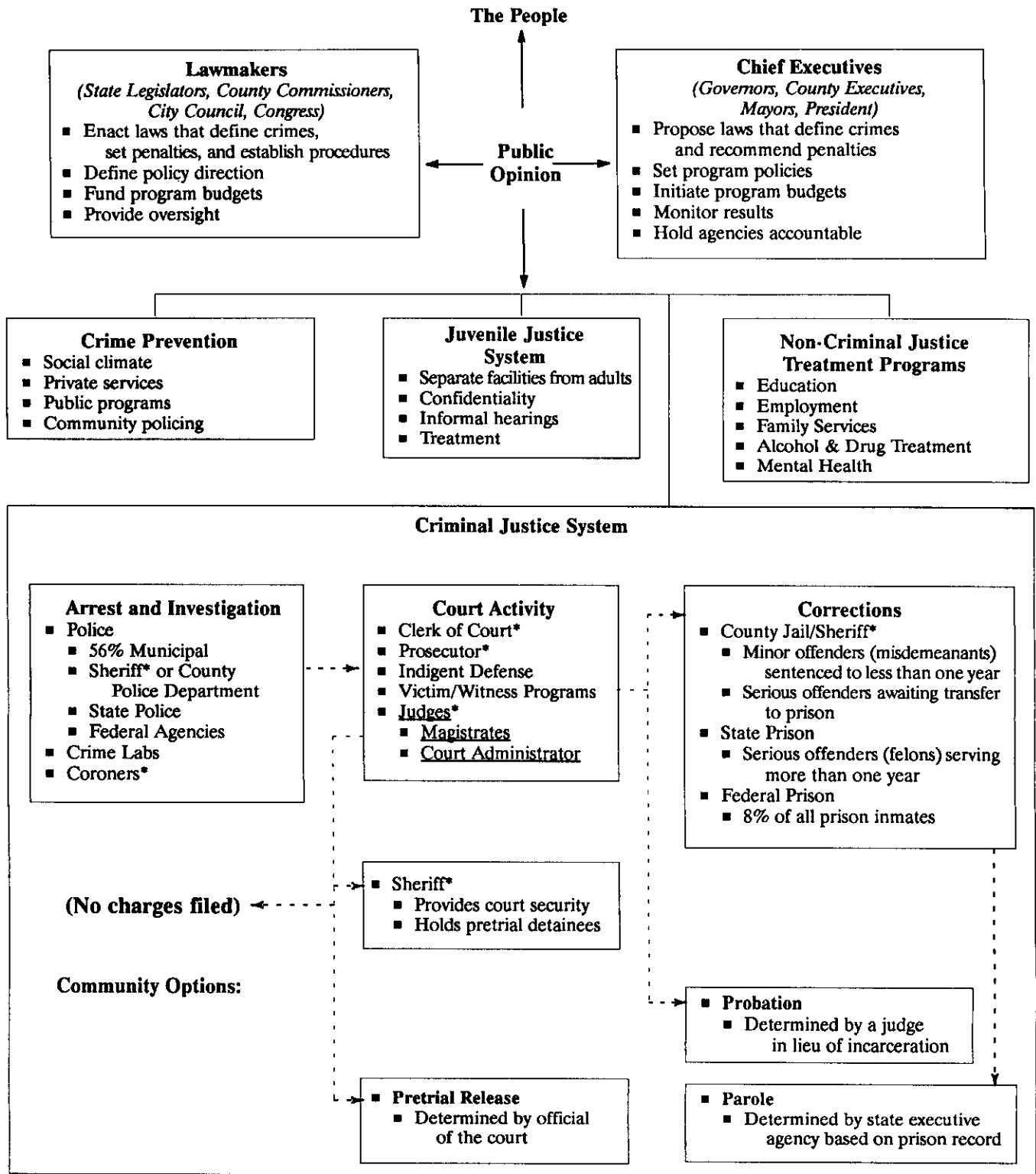
1. Dealing with the fear of crime;

2. Fostering cooperation within disparate American criminal justice systems whose structure reflects an historic fear of arbitrary authority; and
3. Getting good information.

Information technology is making possible much more powerful information systems and analytical processes for supporting criminal justice decisionmaking. These systems have the potential to assist elected policymakers in forecasting personnel and facility needs more reliably, based on current trends, and in developing credible fiscal impact statements for proposed sentencing changes or program proposals. They can analyze the impact of mandates from or actions by other governments. Information systems also are improving the efficiency and effectiveness of criminal justice processes for crime investigations, court case management, and correctional classification and supervision.

The value of improved criminal justice information technologies is limited, however, if they are not part of a coordinated system, and the need for coordination far outstrips efforts to promote it. Because of the number of independently elected officials and the division of responsibilities between governments (see Figure 5), lawmakers and chief executives must work with court officials and agency heads over whom they may not have hire/fire power or budget authority. This lack of clear authority

*Figure 5*  
**Criminal Justice Responsibilities**



\* Usually are elected officials

— Judicial Branch or sometimes administered by Judicial Branch

- - - Path of persons accused under state or local laws



limits the ability to demand coordination and obscures responsibility for coordination.

Very few of the coordinating bodies mandated by the federal government in the 1970s still exist because most of them focused too much on obtaining federal grants. However, some officials are using the most pressing problem in their system to draw players together. Successful efforts typically involve both a forum for debate and consensus building among policymakers and a mechanism for operational collaboration.

Some crisis-oriented efforts have built on initial successes (e.g., court case management to relieve jail overcrowding or criminal justice budget review) to establish ongoing comprehensive mechanisms to:

- Coordinate general government and criminal justice goals;
- Identify and realize intergovernmental and inter-agency operating efficiencies;
- Balance the system so that bottlenecks do not develop and undercut the effort of individual agencies;
- Foster community consensus on criminal justice philosophies and implementation policies; and
- Build trust.

Participation by the chief elected officials of general government is important to hold groups together and to cement the essential link between the general government and the criminal justice community.

The chief elected officials of general government play unique and essential roles in criminal justice to ensure that criminal justice agencies function efficiently and effectively in response to the will of the people. From sentencing legislation to budget appropriations to intergovernmental collaboration to ensuring justice to providing for the general welfare, they must play all roles knowledgeably in relation to each other if the system is to work well.

The articles in this issue of *Perspective*, ACIR's *Guide to the Criminal Justice System for General Government Elected Officials* and *The Role of General Government Elected Officials in Criminal Justice* represent a much needed source of information and policy discussion targeted to help general government elected officials and public administrators understand the criminal justice system and function effectively in dealing with crime.

*This article draws from U.S. ACIR research and recommendations contained in two publications released in Spring 1993—Guide to the Criminal Justice System for General Government Elected Officials and The Role of General Government Elected Officials in Criminal Justice. Vivian E. Watts was the principal investigator during the study and prepared the two reports.*

## Significant Features of Fiscal Federalism

1993 Edition      Volume I

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**Significant Features of Fiscal Federalism, 1993 Edition, Volume I**, is ACIR's convenient source of up-to-date comparative data on federal, state, and local taxes and budget processes.

**Significant Features of Fiscal Federalism** is for policymakers, fiscal analysts, and other public finance practitioners, educators, and all citizens interested in the government finance system.

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M-185      1993      \$20

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# Perspectives on Sentencing

Vincent L. Broderick

**S**entencing is a crucial part of the criminal justice process. When appropriately used, sentencing deters and even prevents crime. It is not always appropriately used, however, and may function in some cases as a *substitute* for crucial anticrime measures. It has counterproductive aspects when it is applied without regard to the facts of individual cases. It may cause prisons to function as schools for crime for first offenders, and it may serve to fill prisons with less dangerous criminals while more hazardous ones are being released.

## Sentencing Disparities

Disparities between the sentences imposed by different judges may create an impression of inequity. But this impression can be misleading. Unwarranted disparity in sentencing is an evil to be avoided, but so is unwarranted uniformity. Every case is different, and every defendant is unique. The disparities are often warranted, reflecting factual differences in circumstances between cases that cannot always be foreseen in detail or given a numerical evaluation. Moreover, the diversity of geographic areas in the United States and within any of our large states cannot properly be ignored: a rifle in Central Park in Manhattan is not the same as one in the badlands of Montana.

Attempting to treat factual disparities mathematically or mechanically may have the vice of what Justice Holmes once called "delusive exactness."<sup>1</sup>

There are identifiable reasons for the counterproductive aspects of sentencing:

- The public is justifiably angry about the depredations of crime and the failure to deal with it more effectively. It has become politically profitable for elected officials to enact laws prescribing mandatory minimum sentences without regard to the effect of rigid sentences on conviction rates, on the capacities of our prisons, or on the individuals being sentenced.
- Alternatives to imprisonment, such as technologically monitored home confinement, are budgeted separately. Even if they are effective and their use would save money, funds often cannot be obtained for them, in part because of the high cost of the prison system itself.

## Individualized vs. Mandatory Minimum Sentencing

The importance of individualized sentencing is beginning to receive renewed attention and respect. Federal judges are beginning to take very seriously their duty to depart from sentencing guidelines when there are factual patterns not foreseen when the guidelines were prepared.<sup>2</sup>

Resistance to wooden implementation of mandatory minimums is increasing within the judiciary. The popularity of rigid mandatory minimum sentences, which also tend to distort guideline sentencing when efforts are made to keep the guidelines consistent with such minimums may have passed its pinnacle. The function of the courts in our democratic republic includes protecting the public from irresponsible short-run swings of opinion. As Harlan Fiske Stone wrote, "sober second thought of the community . . . is the firm base on which all law must ultimately rest."<sup>3</sup>

Mandatory minimums in sentencing recap an idea tried and found to be unsuccessful. Mandatory minimums in narcotics cases, defined in 1956, were repealed in 1970. Folklore has it that during the years prior to 1970, when mandatory minimum laws applied, there were more illegal searches and seizures discovered by the federal appellate courts than before or since, resulting in the nullification of the mandatory minimum sentences and the release of many defendants.

According to Gerald J. Fitzpatrick in a letter to the editor entitled "The People's Constitutional Umpire," published in the *New York Times* of September 2, 1983, "in the long run, the Constitution is in fact what the people want it to be." This does not mean that politically popular short-term mirages, e.g., that a regimen of mandatory minimum sentencing is in fact tough on crime) should be permitted to eviscerate the constitutional functions of the judiciary.

In one recent instance, a state jurist chose to resign rather than to follow a direction by a higher court to impose a mandatory sentence she considered wrong.<sup>4</sup> This was an extreme—and, hence, dramatic—form of protest. Another course where a judge's conscience conflicts with mandatory minimums (or mandatory guidelines) may be to weigh the question of the constitutionality of a mandatory sentence as applied to the facts of a particular case. The U.S. Constitution's Eighth Amendment, and comparable provisions of state constitutions, may not merely bar some sentences as cruel and unusual punishment but may require judges to consider all of the facts in applying the law to each case before them rather than to act in a wooden or literalistic manner. The framers of the Constitution expected the courts to apply the law to the facts in a principled way, not to act as automatons. Thus, Alexander Hamilton stated in *The Federalist* No. 78:

[I]t is not with a view to [direct] infractions of the Constitution only, that the independence of the judges may be an essential safeguard against the effects of occasional ill humors in the society. These sometimes extend no farther than to the injury of the private rights of particular classes of citizens, by unjust and partial laws. Here also the firmness of the judicial magistracy is of vast importance in mitigating the severity and confining the operation of such laws.

One approach to statutory mandatory minimum sentences might be for the judge to adopt a "purpose" interpretation, as is done with other statutes: where the purposes leading to the adoption of the mandatory minimums are not implicated, neither is the letter of the statute.<sup>5</sup>

### Making Sentencing Effective

Selective rather than automatic use of imprisonment is critical to the effectiveness of sentencing as an anticrime measure, but cannot by itself make sentencing work constructively. For that purpose, affirmative new steps are needed.

The purposes of federal sentencing set forth in 18 USC §3553 and 28 USC §994(j) encourage sentences other than imprisonment where adequate. Flexible use of community corrections, including home confinement, compensatory service, restitution, and abstention from involvement in types of activities related to former crimes, is acquiring greater attention because the blanket use of imprisonment has failed to achieve the statutory purposes of sentencing.

An important option is home detention with nonremovable electronic monitoring devices. This avoids many

of the downsides of custodial incarceration, including the tendency for prisons to become schools for crime for first offenders, separation from family and often from work that can be done at home, and the high financial cost of custodial imprisonment.

Home detention, however, cannot be imposed by courts unless technical and supervisory services are available to make it work. Despite the financial savings, budgetary limits imposed on the agencies furnishing the supervision pose a barrier to the fullest use of this important device.

It makes no sense for the public sector to spend more money on expensive imprisonment in order to save far lesser sums necessitated for home confinement. Three ways to avoid this result may be considered:

- Budget makers could wisely recognize that increasing expenditures for home detention devices and supervision will save rather than cost money if the consequences are netted out. This approach may be difficult to implement because of the tendency to handle budget crises by across-the-board cuts without fine tuning.
- Where expenditure A creates a demonstrated saving for activity B, such as home monitoring does for imprisonment, the budget for B could be charged with the cost for A even if activity B is implemented by another agency. While this approach would be useful, its implementation is certain to arouse resistance on the part of those whose budgets are charged with the activities of other agencies. In the hothouse of annual budget making, with its built-in emergency atmosphere, once controversy arises the tendency is to revert back to blanket cuts, thus bypassing detailed consideration.
- A traditional and but little discussed option also capable of permitting longer term and hence more cost-effective planning might be for the Congress and state or local legislatures to consider granting a *permanent appropriation* (to continue until modified), for the costs of home detention monitoring devices and supervision on the ground that they produce net savings. This is not a new idea, but one that has been used for many decades when predictability was important to a national or local objective.<sup>6</sup> Relatively small sums would be necessary. The result might be to make pretrial protection of the public effective in many more cases without imposing the drastic consequences and costs of custodial imprisonment.

### Deferring Sentencing

In some instances, deferring sentence pending rehabilitation efforts may create a meaningful incentive for defendants to veer away from the path of crime, while giving the judges a more accurate insight into the chances of success of various sentencing options. The Vera Institute of Justice was able to devise greatly improved sentencing processes to utilize rehabilitation effectively in

metropolitan courts in the New York area. Where a defendant entered an approved rehabilitation program, either prosecution and in other instances sentencing were deferred.<sup>7</sup> Defendants with substantial records of failed rehabilitations or commission of further crime were more likely to be detained either in custody or in home detention for protection of the community.

### Putting Charges on Hold

Some cases might be removed from the serious category either by the court, prosecutors, or police at an early stage, and granted the equivalent of station house or precinct probation. This would put any formal charges on hold pending observation of the party's behavior.<sup>8</sup> Such methods, where consented to by the defendant and a representative of the prosecutorial authority, would be a civilian version of the similar function of Article 15 of the Uniform Code of Military Justice, which siphons many minor cases away from the full formal court martial route. This avoids potentially drastic consequences for the defendant and costs to the legal system, as well as loss of legitimate activity the defendant could carry forward.<sup>9</sup>

### Using Constructive Assignment Policies

Under current procedures, the role of the court is drastically reduced once a defendant is sentenced. The judge is not encouraged, in part for pragmatic reasons, to recommend or require specific types of treatment for a defendant within a prison system. But there is room for the execution of constructive assignment policies by prison authorities. For example, placing some prisoners in less and less burdensome environments if they show more responsible behavior, but placing them in less desirable and higher security ones if they do not, has been found successful in some instances in a procedure known as Reality Therapy.<sup>10</sup> Similarly, enhanced efforts to find useful work that prisoners can do to reduce the cost of imprisonment to the government and to provide better training for the workplace prior to release may be crucial.

### The Role of Plea Bargaining

Any review of sentencing processes would be incomplete without attention to another potentially counterproductive aspect of much sentencing practice: giving significant weight to a defendant's decision to plead guilty or to stand trial. Whether in the form of plea bargaining or credit for acceptance of responsibility, the legal system places a heavy burden on a defendant who exercises the constitutional right to demand trial, thus inevitably coercing many to plead guilty whether or not they are guilty. The time may be coming when this issue may be ripe for more intensive discussion.

Emphasis on plea bargaining, even though it tends to substitute at least the hint of coercion for justice, is defended on the ground that it is the only way to clear dockets.<sup>11</sup> Other means of accelerating criminal trials are available, such as eliminating many minor cases not truly justifying the consumption of resources, eliminating overtrying of cases through use of cumulative or unnecessary evidence, focusing on major malefactors rather than minor

figures, and avoiding use of excessively lengthy indictments where concurrent sentences are certain in any event.

Excessive reliance on plea bargaining is unpopular with the public. The public perception is that plea bargains mean inadequate sentences and a revolving door often to provide impressive conviction statistics for prosecutors and courts. Public anger over such plea bargains is, indeed, one source of counterproductive demands for mandatory minimums, counterproductive because, among other things, mandatory minimums often encourage bargains for pleas not covered by the minimums.

### The Criminal Justice System

In order to be meaningful, discussion of sentencing must begin and end with attention to the criminal justice process as a whole. Greater efforts to stop crime at the source through more effective police effort and citizen involvement must be combined with reevaluation of concepts of criminal justice procedure in light of current conditions.

Perhaps ways can be found to achieve the objectives of our great constitutional guarantees in criminal justice to a greater degree, while also enhancing detection and deterrence of crime. Fairness and effectiveness in criminal justice are mutually dependent, not mutually opposed. The last time these great subjects were widely revisited was during the congressional analyses of implications of organized crime in the 1970s; perhaps these subjects again call out for renewed discussion.<sup>12</sup>

At the same time, the need to compete with various criminal organizations for the allegiance of vulnerable young people cannot be overestimated. Part of such competition may involve a reinvigorated search for understanding the reasons, be they a perverse form of technological advance in the field of abusable drugs or other events underlying the explosion of narcotics abuse beginning in the late 1950s.

Another and even more pervasive element of such competition must be creation on a large scale of jobs with truly challenging and rewarding career ladders.

The need to deal with what were once called root causes does not call for maudlin sentimentality in excusing crime because of its causes. It does call for revival of attention to factors that have made crime successful in recruiting a significant portion of our youth.

How to overcome those factors is necessarily beyond the scope of the present discussion. The necessity to do it is, however, central to this discussion. Without it, other measures will falter.

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### Notes

<sup>1</sup> *Truax v. Corrigan*, 257 U.S. 312, 243 (1921) (Holmes, J. dissenting).

<sup>2</sup> See *United States v. Merritt*, Dkt. No. 986 (2d Cir. Feb. 9, 1993) (Leval, D.J., sitting by designation); *United States v. Caruso*, F. Supp.—(S.D.N.Y. 1993); Freed, "Federal Sentencing in the Wake of Guidelines: Unacceptable Limits on the Discretion of Sentencers," *Yale Law Journal* 101 (1992): 1681.

<sup>3</sup> "The Common Law in the United States," *Harvard Law Review* 50. (December 1936): 18.



<sup>4</sup> See Lois G. Forer, "Justice by the Numbers: Mandatory Sentencing Drove Me from Bench," *Washington Monthly*, April 1992, p. 12.

<sup>5</sup> See *United States v. Classic*, 313 U.S. 299, 317-18 (1941). If a higher court disagrees with a sentencing jurist's refusal to implement a mandatory minimum, presumably the case might be reassigned. See Weinstein, "The Limited Power of the Federal Courts of Appeals to Order a Case Reassigned to Another District Judge," *F.R.D.* 120 (1988): 267.

<sup>6</sup> See, for example, 31 USC §1304 (judgments against the United States under 28 USC §2414); 31 USC §1305 (miscellaneous permanent appropriations); 16 USC §539d(a) (controversial but extant permanent logging subsidy for national forest). For earlier history, see, for example, 31 USC §§711, 125, 725a (1964 ed).

<sup>7</sup> See Baer, "Recidivism, Discretion and Deferred Prosecution," *Record of the Association of the Bar of the City of New York* 29 (1974): 141; and Evans and Stallman, "Deferred Sentence: Common Law Alternative to Judge's Dilemma," *New York Law Journal*, November 22, 1982, p. 1; November 23, 1982, p. 26;

November 24, 1982, p. 6; November 29, 1982, p. 4; November 30, 1982, p. 4; N.Y. Criminal Procedure Law 380.30, 390.20, 390.30.

<sup>8</sup> See New York State Bar Association, Task Force on Simplification of the Law, *Toward Legal Simplification* (1989) ch. 4; *New York, Judiciary Law* 212 and practice commentary.

<sup>9</sup> 10 USC §815. For debate on Article 15, see Note, "Unconstitutional Burden of Article 15," *Yale Law Journal* 1481 (1973): 82. Imwinkelreid & Gilligan, "Unconstitutional Burden of Article 15: A Rebuttal," *Yale Law Journal* 83 (1974): 534.

<sup>10</sup> See W. Glasser, *Reality Therapy* (1973). (This method was even more successful, according to the author, in psychiatric hospitals.)

<sup>11</sup> See generally Schulhofer, "Is Plea Bargaining Inevitable?" *Harvard Law Review* 97 (1984): 1037.

<sup>12</sup> See generally Senate Committee on the Judiciary, Subcommittee on Criminal Laws and Procedures, *Measures Relating to Organized Crime*, Hearings before the 91st Cong., 1st Sess. (1969), pp. 219-229.

## State ACIR News

The Iowa Advisory Commission on Intergovernmental Relations (IACIR) has recommended continuation of its state tax increment financing and tax abatement programs to fund and encourage urban renewal and urban revitalization programs. IACIR found that these programs have been successful and can be improved by additional communication and cooperation among all affected private parties and units of local government.

Other recommendations called for limiting the duration of urban renewal and urban revitalization districts so that increased property values resulting from the program can be utilized by all taxing authorities in the jurisdiction. Finally, IACIR recommended that the Code of Iowa be amended to require clear evidence that tax increment financing monies that are generated by the program be used for specific and appropriate job training.

The South Carolina Advisory Commission on Intergovernmental Relations (SCACIR) has published *A Charter Form of Government for South Carolina's Counties*. In recognition of the future role of county government as service provider to an increasingly metropolitan population, SCACIR proposes an alternative form of government as an option that would enable county councils to assume management authority and responsibility similar to municipal councils.

Several policy recommendations of the Florida Advisory Council on Intergovernmental Relations (FACIR) were included in acts passed by the Florida legislature during its 1993 session. The recommendations focused on regional governance, salaries of county constitutional officers and elected school district officials, and local government revenue revisions and enhancements.

FACIR also published a brief report on the privatization of local jails, with examples in Florida and other states.

## Intergovernmental Decisionmaking for Environmental Protection and Public Works

This report examines tensions between proposed state and local public works projects and the federal environmental decisionmaking process. The two goals of protecting the environment and providing adequate infrastructure are compatible in theory, but often do not mesh well under existing policies. As the population and economy grow, the nation needs new highways, airports, dams, wastewater treatment plants, and solid waste facilities. At the same time, the United States is committed to meeting increasingly rigorous environmental goals. ACIR makes several recommendations for integrating the administration and implementation of federal environmental protection laws.

A-122                      1992                      \$10

## Toward a Federal Infrastructure Strategy: Issues and Options

This report details the progress of an inter-agency initiative to develop a federal infrastructure strategy through a partnership including the Department of the Army, the Environmental Protection Agency, the Department of Energy, other federal agencies, state and local governments, and the private sector. Emphasis was placed on planning, design, finance, construction, operation, and maintenance. A broad consensus emerged around five infrastructure issues that should be addressed by the federal government: (1) rationales for federal investment, (2) regulations, (3) technology, (4) financing, and (5) management.

A-120                      1992                      \$8

(see page 36 for order form)

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# State Sentencing Commissions and Guidelines

Kay A. Knapp

**T**he Minnesota legislature established the first state sentencing guidelines commission in 1978. Since then, legislatures in Pennsylvania, Washington, Oregon, Kansas, Tennessee, South Carolina, North Carolina, Louisiana, Ohio, and Arkansas have established similar commissions. State commissions predate the federal sentencing commission, and their work bears little resemblance to that body.

State legislatures establish commissions for several purposes, including:

- 1) Containing the cost of corrections;
- 2) Developing a planning function with ongoing monitoring, impact assessment, and coordination of sentencing policy with correctional resources;
- 3) Establishing "truth in sentencing" by moving sentencing discretion from parole and corrections administrators at the back end of the system to judges at the front end of the system; and
- 4) Reducing sentencing disparity. The importance of these factors has varied over time. Reducing disparity was a stronger factor 15 years ago than it is today, primarily because cost containment has become such a pressing need. It appears that establishing truth in sentencing is a stronger factor today, primarily because overcrowding has resulted in early release from prison.

States also pursue these four objectives in other ways. For example, community corrections acts and other vehicles for funding nonprison programs are fueled by cost concerns, and various determinate sentencing statutes aim to achieve truth in sentencing. The problem with specific responses designed to address a single factor is that the factors tend to be interrelated, and only a systemic approach, such as sentencing guidelines, is likely to yield success. For example, truth in sentencing will probably not be achieved without a planning effort that coordinates sentencing policies with correctional resources. Cost containment is unlikely without clear and authoritative targeting criteria for the use of nonprison programs as well as for prison.

State sentencing commissions have proven to be a useful mechanism for developing and implementing sentencing policy. Minnesota, Washington, and Oregon used sentencing commissions and guidelines to establish truth in sentencing, and they have been relatively effective in maintaining that system. Commissions in Kansas, North Carolina, Ohio, and Arkansas are proposing similar truth in sentencing policies. Most observers agree that sentencing guidelines have reduced disparity.

State commissions also have been effective at cost containment, at least as long as that remains a high priority for a state. However, sentencing policy is dynamic. When a state legislature decides to change sentences, a guideline system is an effective vehicle for making those changes. Most changes over the last decade have increased sentences. The usual pattern has been to implement sentencing guidelines that either decreased, stabilized, or reduced the growth in corrections populations. After a few years, the legislature or commission increases certain sentences, with a concomitant increase in corrections populations. The planning, coordination, and monitoring functions performed by the commission ensure that the corrections impacts are known in advance of any changes in the sentencing policy.

### An Illustration: The Arkansas Case

Arkansas is the latest state to establish a sentencing commission (March 1993). A brief history of that effort helps illustrate the issues that many states face and the processes necessary to establish a systemic approach to these issues.

In June 1987, Governor Bill Clinton created the Commission on Arkansas Probation, Parole, and Sentencing Procedures. The purposes of the commission were to promote consistency and fairness in the application of laws and to determine whether the state should expand use of alternatives to incarceration for nonviolent offenders. In its January 1989 report, the commission called for the creation of an entity with a funded staff to advise the governor and the legislature of needed changes. The report also cautioned against an ad hoc approach to a growing and complex criminal justice system.

In the spring of 1991, Governor Clinton signed legislation that established a two-year Corrections Resources Commission, with three full-time positions, to develop a more balanced correctional system through (1) the development of sentencing guidelines; (2) a proposed community corrections act; and (3) any recommended revisions in agencies governing community corrections, probation, and parole. The commission was chaired by Lieutenant Governor Jim Guy Tucker, who exercised strong and effective leadership in developing the commission's proposals and, as governor in 1993, in shepherding the commission's packages through the legislature. Governor Tucker signed the bills into law on March 16, 1993.

#### Issues Before the Commission

The first commission meeting was held on July 31, 1991. The commission spent the next 18 months struggling with three issues: (1) bifurcated trials (separating the determination of guilt from sentencing by juries); (2) the development of a community corrections act; and (3) the development of sentencing standards. The bifurcation issue applies only to Arkansas, Kentucky, Missouri, Oklahoma, Texas, and Virginia, which still have jury sentencing for noncapital crimes. The commission found it necessary to devote a substantial amount of time and energy to this issue.

There was a consensus on the desirability of a community corrections act, resulting from four years of debate. The relatively little funding available for nonprison corrections went to probation officers who were supervised by judges. There was general agreement that the state should spend more on nonprison corrections resources. The difficult question for Arkansas, and for all other states, was how to structure the act with respect to state-local relationships and the executive and judicial branches of government, and how to organize the entities that would administer the act.

Ultimately, the Corrections Resources Commission recommended a major reorganization that:

1. Created the Department of Community Punishment in the executive branch, to include both probation officers who were formerly supervised by judges and new community corrections resources;
2. Amended the powers of the Department of Correction, the most significant of which involved moving field parole officers to the Department of Community Punishment; and
3. Merged the Board of Correction with the Adult Probation Commission to form the new Board of Correction and Community Punishment.

Other aspects of the reorganization are discussed below in conjunction with sentencing standards.

**Structural Changes.** Moving probation officers from judicial supervision to a new executive branch agency is a major structural change. Without that change, community resources would have been fragmented and more difficult to manage efficiently (as is the case in Kansas). On the other hand, judges were reluctant to relinquish their probation officers who are virtually the only resource staff available. Those concerns were addressed by giving judges direct access to the community resources either as conditions of probationary sentences or as a direct judicial transfer from the Department of Correction to the Department of Community Punishment.

Unlike community corrections act structures in Minnesota and Oregon, the administration and operation of the Arkansas act is relatively state-centralized. Rather than county-based corrections, the commission envisioned regional-based community punishment. The act anticipates minimum-security regional facilities from which an array of community programs can be operated or administered. The exact nature of the state-regional relationship will be determined as the act is implemented. Substantial resources were appropriated to the Department of Community Punishment—\$13.5 million for fiscal 1994 and \$18 million for fiscal 1995. These appropriations can be contrasted with the previous \$2 million annual state appropriation for probation. The increased funds for community corrections resources did not reduce the Department of Correction budget, as occurred in some states, such as Arizona. The appropriations indicate an understanding that cost containment in corrections requires a long-term process rather than a quick fix, and that cost containment depends on the development of a community corrections infrastructure.

**Sentencing Standards.** The Corrections Resources Commission was mandated to develop guidelines for use by sentencing courts. The specter of the expensive, unpopular, and unwieldy federal sentencing guidelines gave the commission pause. Over time, the commission became aware of other state efforts and their distinction from the federal sentencing guidelines, and, in 1992, decided to proceed along the state lines.

A minimum of 18 months is generally needed to develop sentencing guidelines. The delay in proceeding

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on this issue due to concerns regarding the federal sentencing guidelines left relatively little time prior to the 1993 legislative session. However, the commission proceeded with two main tasks in creating the sentencing structure. The first task was the development of a seriousness ranking of crimes based on a concept of the "typical case." The commission asked additional prosecutors and defenders, based on experience, to aid them in this task. The group discussed the typical cases they saw for each Arkansas code offense that covered significant numbers of cases. There was broad consensus regarding the nature of cases coming into the courts. The second task was to determine appropriate criminal history factors for differentiating offenders.

The most fundamental sentencing policy decision is where sentencing discretion will be placed. In Arkansas, as in many other states, sentencing discretion had increasingly moved to the back end of the system in order to manage populations in crowded prison systems. There was substantial consensus among the commission members that sentences should be more truthful and that judges should have greater sentencing discretion. As a result, the following modifications were made of the state Board of Parole and Community Rehabilitation:

1. Changed the name to the Post-Prison Transfer Board;
2. Established mandatory transfer from prison to the Department of Community Punishment after serving one-sixth of a sentence for less serious offenses and one-quarter of a sentence for some more serious offenses; and
3. Established discretionary transfer from prison to the Department of Community Punishment by the Post-Prison Transfer Board after one-quarter of the sentence has been served for crimes such as first degree murder, rape, aggravated robbery, and certain drug offenses.

The entire pronounced sentence of all offenders is to be served, generally with part in prison and the remainder in community punishment facilities, programs, or under supervision.

Enhancing judicial sentencing discretion takes more than a pronouncement of mandatory transfer. It requires that the corrections resources necessary to implement judges' sentences be in place. Thus, it is necessary to coordinate sentencing policy with corrections resources. The commission used data from the Administrative Office of the Courts and the Department of Correction to assess the impact of various sentencing policies on correctional resources. Existing data sources are generally not sufficiently detailed to support systemic impact assessment, and additional data collection is usually necessary. Because of time and budget constraints, the commission decided to proceed tentatively with the available data.

Within the sentencing structure that had been drafted, the commission developed targeting criteria for community corrections and various sentence durations for prison and for community punishments. These scenarios were assessed using a structured sentencing simulation model to determine the community corrections resources and the number of prison beds that would be necessary to implement the policies.

While the commission members made enormous strides toward developing sentencing standards in a very short time, they ultimately decided that they needed an ongoing sentencing commission to finish the work and to perform the monitoring and strategic planning functions. The 1993 legislation incorporates the basic sentencing structure that was developed by the Corrections Resources Commission and charges the newly designated Arkansas Sentencing Commission to complete the development of voluntary sentencing standards by January 1994. The additional time will allow for data collection and more thorough impact assessment, as well as for more public education. It also will allow time to develop some community corrections resources to be available to the sentencing judges and to the Post-Prison Transfer Board prior to implementing sentencing standards.

The Arkansas Sentencing Commission appropriation is \$278,000 for the first year and \$268,000 for the second year. There are four full-time positions. Unlike the federal sentencing commission, which grew from an initial staff of approximately 40 to more than 100, state sentencing commission staffs are small and often decline in size as the sentencing system becomes routine.

### Implementing Guidelines

It is important to remember two things about state sentencing guidelines systems developed under a legislative mandate. First, sentencing policy is dynamic, not static. Decisions regarding the distribution of correctional resources, the priorities regarding their use, and the distribution of sentencing discretion are not decided once and for all. While we would expect that systemic policies developed under a consensus model will be more stable than ad hoc policies, change will certainly occur. Key allocation issues will continue to be discussed and decisions will change as leaders and legislatures change.

Second, a sentencing guideline system is best thought of as a vehicle rather than a substantive policy. The sentencing guidelines system brings process, data and information, and analysis together on an ongoing basis. One expects that this type of system will yield more rational policy than would be developed in its absence. However, one expects that it also will be responsive to the political environment of which it is a part.

*Kay A. Knapp is director of the Institute for Rational Public Policy, Inc., Takoma Park, Maryland.*



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# Intergovernmental Digest

## 1994 Budget Brings Changes in Intergovernmental Finance

President Clinton's 1994 budget includes some new and important developments for intergovernmental finance. Although several economic stimulus proposals to be implemented in 1993 were not approved by the Congress, important proposals for 1994 and subsequent years include:

- Two new grants to states to capitalize revolving loan funds for drinking water improvements (\$599 million in 1994) and a program to improve water quality (\$1.2 billion in 1994).
- Full funding of ISTEA (transportation program), with a 17 percent increase of almost \$3 billion to a total of \$20.6 billion in 1994.
- Additional funds (about \$1.2 billion over four years) to replace overage buses and vans, and to fund rail cars and rail rehabilitation projects.
- A one-time supplemental appropriation of \$2.5 billion for community development block grants.
- Regulatory and statutory changes in the HOME (housing) program to increase participant flexibility and information and speed the spendout of \$2.5 billion in previously released funds.
- Estimated outlays of \$2.4 billion over four years for enterprise zones to promote investment and job creation in distressed urban and rural communities.

## City/Suburban Economies: A Common Destiny

The National League of Cities recently released its 1993 economic report, "All In It Together," which finds that "in each of the 25 metropolitan areas with the most rapidly growing suburbs, measured by changes in median household income, central city incomes also increased in the 1979-1989 period." The report emphasizes that the economic destiny of suburbs and their central cities are intertwined because they represent an interdependent economy. The report concludes that federal economic policies should be designed to improve the condition and performance of local economic regions, addressing circumstances and needs, and diminishing city/suburb disparities.

## Property Tax Revenue Up

About 14.6 percent of all local and state tax revenues received during the year ending March 31, 1992, were derived from property taxes. This is the highest percentage for property taxes for the past 13 years. Property taxes yielded approximately \$174.2 billion in total, with \$169 billion for 66,000 local governments and \$5.2 billion for the 42 state governments that impose them. Nationwide, three out of four local tax dollars come from property taxes.

## State Medicaid Spending Up, Higher Education Down for 1993

The National Conference of State Legislatures reports that most states' 1993 budgets reflected shifts in spending. Nationally, the biggest 1993 shifts occurred between Medicaid, with a 6.2 percent increase, and higher education, a .2 percent loser. Not far behind Medicaid in increases were AFDC and corrections appropriations. The increases for both Medicaid and corrections, however, were well below the rate of increases in prior years. U.S. health care expenditures have grown much more rapidly as a share of national income than those of other countries. The primary factors behind rapid growth of health care spending are higher than average price increases received by health care providers and rapid growth in intensity or per unit of service, and the introduction of new technologies and treatments.

**Majority of Poor People Live in Smaller Cities**

*Poor Cities: An Analysis of Poverty in U.S. Cities Over 50,000*, issued by the Greater Washington Research Center, finds that the 25 largest cities contain 43 percent of all poor city dwellers; 57 percent live in smaller cities. The report finds that poverty increased in seven out of ten cities during the 1980s and that poverty is becoming more concentrated in the cities where poverty rates were already the highest. Contrary to perceptions, the report says that 16 of the 25 cities with the highest poverty rates have populations under 100,000.

**25 U.S. Cities with Highest Poverty Rates**

Rank	City	Poverty Rate	Rank	City	Poverty Rate
1.	Brownsville, Texas	43.9%	14.	Provo, Utah	29.6%
2.	College Station, Texas	38.0	15.	Gary, Indiana	29.4
3.	Monroe, Louisiana	37.8	16.	Youngstown, Ohio	29.0
4.	Laredo, Texas	37.3	17.	Cleveland, Ohio	28.7
5.	Camden, New Jersey	36.6	18.	Waco, Texas	28.7
6.	East Lansing, Michigan	33.8	19.	Port Arthur, Texas	28.1
7.	McAllen, Texas	32.7	20.	Pine Bluff, Arizona	27.7
8.	Detroit, Michigan	32.4	21.	Albany, Georgia	27.5
9.	Saginaw, Michigan	31.7	22.	Compton, California	27.5
10.	New Orleans, Louisiana	31.6	23.	Hartford, Connecticut	27.5
11.	Bloomington, Indiana	31.5	24.	Lawrence, Massachusetts	27.5
12.	Miami, Florida	31.2	25.	Atlanta, Georgia	27.3
13.	Flint, Michigan	30.6			

**State Fiscal Conditions Slightly Better in 1992**

In the March 1993 *Survey of Current Business*, the Department of Commerce Bureau of Economic Analysis reported that, on a national income basis, exclusive of social insurance funds, state and local expenditures for calendar year 1992 exceeded revenues by \$42 billion (down slightly from \$43 billion in 1991, but well above the prerecession imbalance of \$17.5 billion in 1989). Because of the accounting methods used in these calculations, especially excluding bond proceeds from revenues but including their use as an expenditure, these imbalances do not reflect actual state and local budget results.

Although the information about revenues is highly aggregated, it provides an early indication that 1992 revenues turned upward for many state and local governments, partly because of substantial tax-rate increases. Total own-source revenues increased by 6.6 percent in 1992, compared to 4.5 percent in 1991. Sales and income taxes led the way with 6.5 percent and 5.0 percent increases, compared to 3.0 percent and 4.0 percent in 1991. Property taxes, a mainstay of local governments, continued to lose ground, with a 7.6 percent increase compared to 7.9 percent in 1991 and 12.4 percent in 1989.

Total expenditures increased by 8.1 percent, down from the 8.8 percent increase in 1991. Transfer payments, led by a 21 percent increase in Medicaid, increased 18 percent, while state and local employee compensation increased only 4.4 percent. Some of the increase in transfer payment costs was offset by the 12.8 percent increase in federal grants in 1992. Federal grants, excluding Medicaid, increased only 8 percent in 1992, about the same as in 1991.

State and local interest payments increased from \$63.7 billion in 1991 to \$66.5 billion in 1992, while interest earnings, exclusive of social insurance funds, decreased from \$63.6 to \$62.6 billion.

**More State Lotteries**

New lotteries were approved in Georgia, Mississippi, and Nebraska last year. The following 37 states plus the District of Columbia were authorized to run lotteries as of November 1992. Source: National Conference of State Legislatures.

State	Use of Net Revenue
Arizona	Transportation
California	Education
Colorado	Parks and education
Connecticut	General fund
Delaware	General fund
Florida	Education
Georgia	Education

Idaho	Permanent building fund, school district building fund
Illinois	Education, general fund, human services
Indiana	"Build Indiana" fund
Iowa	Environment, agriculture, natural resources fund
Kansas	Economic development
Kentucky	Education
Louisiana	General fund
Maine	General fund
Maryland	General fund
Massachusetts	Local government, arts
Michigan	Education
Mississippi	To be determined
Missouri	General fund
Montana	Education
Nebraska	Education, environment
New Hampshire	Education
New Jersey	Education, state institutions
New York	Education
Ohio	Education
Oregon	Economic development
Pennsylvania	Senior citizen programs
Rhode Island	Public facilities asset protection fund, budget reserve, cash stabilization
South Dakota	General fund
Texas	General fund
Vermont	General fund
Virginia	General fund, capital improvements
Washington	General fund
West Virginia	Education, senior citizens, tourism
Wisconsin	Property tax relief
Washington, DC	General fund

**Ohio Communities Organize Infrastructure Help**

Some 28 federal, state, and local government agencies in Ohio, including education and service agencies, have established the Small Communities Environmental Infrastructure Group (SCEIG) to provide educational, technical, and financial assistance to help small communities meet environmental infrastructure needs. SCEIG specializes in identifying the most appropriate resources to help communities resolve their environmental problems.

**More than 86,000 Governments in 1992 Census**

The Bureau of the Census has released its initial count of governmental units in the United States in the 1992 Census of Governments. Overall, the number of governments increased to 86,743 from 83,237 in 1987. This is the fourth consecutive census (it is conducted every five years) in which the number of governments has increased. The United States gained one county since 1987, for a 1992 total of 3,043. The number of cities counted is 19,296, an increase of 96. The number of townships dropped to 16,666 from 16,691, as did school districts, from 14,721 in 1987 to 14,556.

Most of the change since 1972 has been in special districts, most of which serve a single purpose and which constitute the most numerous type of government. In 1992, there were 33,131 such districts, up from 29,532 in 1987.

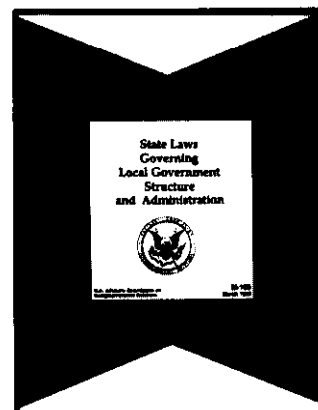
**State Spending Up 10 Percent in 1992**

According to the *1992 State Expenditure Report* issued by the National Association of State Budget Officers, states spent \$596 billion in 1992: \$290 billion in general funds (48.7 percent of the total), \$154 billion in other state funds and bonds (25.8 percent), and \$152 billion in federal funds (25.5 percent). Elementary and secondary education, plus higher education, accounted for nearly 33 percent of state spending in 1992. Medicaid accounted for 17.1 percent (up from 10.1 percent in 1987), followed by transportation at 9.4 percent, cash assistance at 5.1 percent, corrections at 3.5 percent, and all other state expenditures at 32 percent. Medicaid surpassed higher education as the second largest state program in 1990. The gap between Medicaid and higher education continued to widen in 1992, with Medicaid outpacing overall spending growth for state budgets. Elementary and secondary education's share of state spending dropped slightly from 22.1 percent in 1991 to 21.4 percent in 1992. Higher education maintained its share of state spending, mainly because of tuition increases.

### **State Laws Governing Local Government Structure and Administration**

Local governments are key partners in our intergovernmental system, legally established in conformance with state constitutions and statutes. This report surveys state laws and constitutional provisions affecting municipal and county governments, specifically, form of government and home rule, alteration of boundaries, local elections, administrative operations and procedures, financial management, and personnel management. The laws of the 50 states are compared for 1990 and 1978.

**M-186                      1993                      \$10**

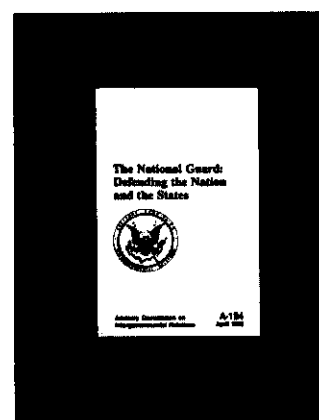


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### **The National Guard: Defending the Nation and the States**

This study focuses on intergovernmental issues concerning the control and operation of the National Guard. The role of the Guard in the 1991 Persian Gulf operations highlighted its place in the nation's defense system. Equally important is the Guard's role in domestic affairs (i.e., emergency preparedness and civil disturbances) under the control of the governors. The report contains recommendations on dual control of the Guard by the federal and state governments, the future of the Guard in the context of national security and state needs, and opportunities for improved intergovernmental cooperation.

**A-124                      1993                      \$15**



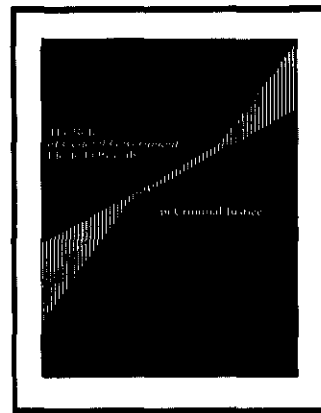
(see page 36 for order form)



### **The Role of General Government Elected Officials in Criminal Justice**

General government elected officials play a crucial role in every aspect of criminal justice—from shaping policy to holding an administrator accountable for the cost of a new building; from listening to a grieving relative plead for tougher sentencing to sorting out the statistical claims of program performance; from using political leverage to requiring interagency collaboration in making hard budget decisions. This report spells out the intergovernmental, policy, and management issues facing general government elected officials in dealing with the effects of explosive growth in the system during the last 15 years and with the challenges of the next decade. It also is a rich source of information for officials in working hard to achieve the best results possible.

**A-125                      1993                      \$20**

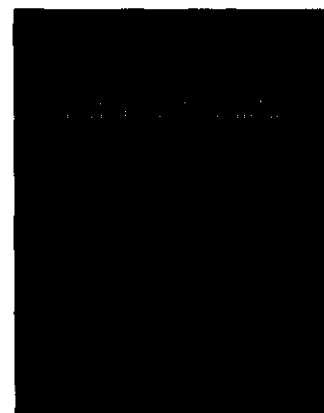


### **Guide to the Criminal Justice System for General Government Elected Officials**

The guide is intended to assist general government officials—elected chief executives, legislators, and administrators and advisors—in their oversight of the criminal justice system. The guide focuses on system actions after crime occurs, emphasizes the role of state and local governments (the federal justice system handles only about 6 percent of criminal cases), focuses on concerns that have major cost impacts across agencies and governments and over time, and provides basic tools to help officials improve the functioning of criminal justice agencies.

**M-184                      1993                      \$8**

**Set (M-184 & A-125)                      \$23**  
**(reports must be purchased together)**



(see page 36 for order form)

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# Policing and Effective Law Enforcement

Patrick V. Murphy

**T**he role of the police is to help the people exercise social control. Social control influences behavior and sets standards. It enables a community to prevent and control crime. The concept of assisting the community has not been accepted in most urban police departments. The usual approach, especially in low income/high crime neighborhoods, has been for the police to attempt to accomplish their mission alone. That reality is acknowledged by the widespread support for changing to "community policing," which argues that the police can't do the job alone, that they must work with the people as partners.

The advent of the patrol car 50 years ago generated the theory of omnipresence, which postulated that the greatly increased visibility of the motorized officer, contrasted to the traditional foot officer, would deter potential criminals by convincing them that they would be caught in the act. The desired results did not materialize, but the automobile separated the people from the police. The foot officer had talked with the people, known them by name, exchanged information—the lifeblood of police work—with them, knew the area and its problems, and could be held more accountable for preventing crime as well as assisting in solving crimes.

The work of the police is concerned with human behavior and misbehavior. It is complex and demanding. Every officer has broad discretion in enforcing the law and in exercising the considerable authority involved in carrying out other duties. Adequate education and training are essential. Thousands of individual departments cannot be self-sufficient in fulfilling their awesome responsibilities. They need to exchange ideas and experiences. It is important that they contribute to and benefit from an ever-growing body of knowledge, as every established profession does. For these fundamental conditions of effective performance to occur, it is clear that local government is dependent on state and federal support. The concept of local policing as it exists, rather than state or national policing, is flawed because the intergovernmental relationship that is necessary to make it work has never been established.

## **An Intergovernmental Arrangement Needed**

Every nation needs a police system. The United States does not have one. The United States has the highest rates of crime and incarceration in the industrial world. The nation is policed by a fragmented, insular, unprofessional nonsystem of more than 15,000 local departments. Neither the federal government nor the states provide a reasonable level of coordination, criminal intelligence, records, statistics, planning, research, technical assistance, training, education, or personnel services. It is obvious that local policing requires a support structure that can be provided only by the states and the federal government. An active arrangement of intergovernmental relations is essential. It is not in place.

## **Federal Spending Increases**

The federal government increased spending on law enforcement dramatically during the 1980s, especially during the last four years. It also increased spending on imprisonment significantly. The large increases for law enforcement have paid principally for additional agents in the Drug Enforcement Administration and Federal Bureau of Investigation, as well as other federal enforcement in the so-called war on drugs. Some drug war money reached state and local police departments. It was earmarked for drug enforcement, although the violent crime problem had grown to be a more serious matter. The political dimensions of crime and drugs combined with the ability of Washington to influence public opinion have contributed to the neglect of the development of an

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intergovernmental support structure for policing. The police themselves have ignored the need.

Enormous increases in expenditures for federal drug enforcement have been popular with the public. Upgrading policing has been ignored. The public doesn't understand the need. The people suffer and pay a high price because policing is leaderless. Neither Washington nor the state capitols have produced leadership for the critical function of policing.

### **The Local Police Department Can't Work Alone**

The independent local police departments in the United States have not been systematized. Personnel have not been professionalized. Opportunities to interact to exchange ideas or share experiences are few and far between. U.S. crime rates are significantly higher than those in Canada, Japan, Australia, and western Europe. A fundamental responsibility of the police is the prevention of crime, and higher rates indicate the relative ineffectiveness of American policing compared to that in other industrial nations. Considering the direct correlation between crime and poverty, the great wealth of the United States should be expected to produce a lower crime rate. However, we do not have a social safety net comparable to those in countries with lower crime rates. The heavy concentrations of poor people in inner cities account for large portions of our violent crime. The police face a difficult combination of crime-causing problems in inner cities. The nation, especially cities, is the victim of its counterproductive policy of not providing a safety net. The savings in crime and related costs would more than pay for a dignified level of income, housing, and health care.

Local policing cannot work without the federal and state governments providing a backup support structure of services and standards. Crime and criminals cross jurisdictional boundaries daily. Individual departments cannot control crime in their own areas without coordinating with other departments and checking FBI fingerprint records. To be most effective, departments should be part of active regional, state, and national criminal intelligence systems. Unfortunately, there is no comprehensive network of criminal intelligence. If there were, it would make a significant contribution to the reduction of crime. Neither the states nor the federal government acknowledge that more than 15,000 separate agencies are at a fundamental disadvantage because they are isolated from one another. Every day, crimes go unsolved because departments in a metropolitan region do not exchange sufficient information. The same is true for states and the nation. Criminal intelligence is critical in fitting the pieces of the puzzles together in solving uncleared crimes. In a country of 250 million people and a half-million police officers, it is obvious that criminal intelligence information should be exchanged frequently and systematically.

Until the FBI established its Violent Crime Analysis Program (VICAP) in the 1980s, many serial killers, rapists, and other violent criminals repeated their offenses many times, traveling among several jurisdictions or across state lines. Often, a practically identical modus operandi was used repeatedly. The killer left a "signature" at each crime

scene. Yet, none of the police departments were aware that a similar crime had been committed elsewhere. The movements of the criminal were not being tracked. Valuable information from several agencies that should have been combined to develop a more complete picture was not being exchanged.

The success of VICAP in solving and preventing violent crimes through the collection, analysis, and dissemination of criminal intelligence information causes one to wonder why it took so long for its need to be recognized. It might not yet exist if the father of a young child who was kidnapped had not experienced indifference from a police department in whose jurisdiction his child could have been held. As the father realized that there was no system, that coordination of work on kidnappings was virtually nonexistent, and that information was not being processed, he began the political pressure and public relations campaign that produced VICAP. No police chief conceived of the need for VICAP and obtained support for it.

### **Systemizing the Non-System**

The police community virtually ignores the intergovernmental relations aspects of structuring an effective system of local policing supported by the state and federal governments with communications and records systems, planning and coordinating mechanisms, training, and educational and personnel exchange opportunities, as well as personnel and performance standards.

Policing in the United States could become more effective in preventing crime if:

- Every officer had a four-year college degree;
- Officers were more representative of the communities they protect;
- Operational methods were evaluated rigorously to determine their validity;
- Wasteful policies and practices based on tradition, myth, or untested assumption were eliminated;
- More comparative research among departments identified best practices;
- More training opportunities were available for managers to debate variations among their departments;
- Managers could acquire hands-on experience in other agencies;
- Dissemination of research results in professional publications with open debate were improved;
- The exchange of criminal intelligence information were enhanced;
- Planning and goals by the federal government and the states were institutionalized; and
- Standards were enhanced for background investigation for new officers as well as for supervisors and managers.

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There has been little initiative for such change. There is no constituency that would follow leadership directed toward systematizing the current non-system. There is little awareness of the problem expressed within the police service.

### **Crime and Law Enforcement Assistance**

Crime was not an issue in a national election until 1964 when Sen. Barry Goldwater emphasized "crime in the streets." The President's Commission on Law Enforcement and the Administration of Justice and the Office of Law Enforcement Assistance were created in 1965. In its report, *The Challenge of Crime in a Free Society*, the commission identified roles for the federal and state governments in support of local policing. It also recommended mechanisms for coordinating the work of all agencies of policing and criminal justice in every jurisdiction. Each state was required to establish a state planning agency to be eligible to receive federal block grant funds from the Law Enforcement Assistance Administration (LEAA), which was created in 1968. The federal government had provided grants to the states to establish state planning agencies before LEAA existed.

In the late 1960s, the federal government assisted local policing in several ways. It funded the work and reports of the National Commission on the Causes and Prevention of Violence. The reports identified a number of problems that had not been well understood. The government also funded research, training, and planning that improved policing. It provided funds to the states to plan, to become involved with local police agencies, and to build a permanent structure of support and assistance to convert local policing into a cooperative, professional network. It provided scholarships and grants for college education.

After about ten years, support for LEAA declined and the program ended. Crime rates were not shrinking. The federal initiative was considered a failure because it had not succeeded in reducing crime. Neither had the federal government provided a safety net to minimize poverty, unemployment, substandard housing, and inadequate health care. With the root causes thriving, crime should not have been expected to diminish, even though policing and criminal justice were improving. Fifteen years later, much of what was gained has been lost. Fortunately, some states have continued their enthusiasm for planning, others for information exchange, and others for cooperation. Some have improved testing for entry hiring.

### **Lessons from Abroad**

Other countries avoid the fragmentation and broad variations in policies and methods found in the United States. National or provincial police forces are responsible for operations or control, resulting in greater uniformity as well as more effective crime prevention.

England and Wales have 42 police forces. The national government provides a major portion of their budgets. The Home Office strongly influences the selection of chief constables. They may not head a force in which they have spent their entire careers. Policy requires career mobility, unlike the United States, where the careers of all chiefs, with rare exceptions, are limited to a single department.

Japan has 43 police forces. The top leaders of every force are members of the national police. Among other duties, members of the national police hold high-level positions in Japanese embassies worldwide. National police officers are recruited from the best universities, and many are graduates of Tokyo University's law school, the most prestigious in the country.

Australia has eight state forces. German police also are organized at the provincial level. The Royal Canadian Mounted Police has a significant influence in standardizing and upgrading policing throughout the country.

### **The Role of Government Officials**

Following the first Los Angeles riot in 1965, the federal government began a comprehensive process for rationalizing the policing of the country. It accepted the responsibility, which is indispensable, for providing the services required by the states and local government to implement effective public protection and law enforcement. By 1973, federal assistance for state and local law enforcement amounted to 27 percent of federal justice spending. By 1990, it had declined to 7 percent.

While federal law enforcement agencies have been enlarged and enormous resources poured into the war on drugs, the police have been virtually abandoned. Crime control is a local responsibility, which cannot be fulfilled without federal support services, financial assistance, and leadership. The responsibility of the states similarly requires federal involvement.

The president, the attorney general, and the governors have a responsibility to be concerned about the destruction caused by crime. High rates of violence, the Rodney King beating, and the 1992 Los Angeles riot should cause them to ask: How can the police be improved? What is the function of the federal government in policing? state governments? local governments? How important are the police?

Objective answers will clearly indicate the need for an intergovernmental partnership of all elected officials to minimize crime and drug abuse. Each chief executive should provide leadership to the legislative branch with enthusiasm. Improving the police is highly cost effective. Large amounts of money are not necessary. The problems are not caused by serious underfunding but rather by the federal government's retreat from its role of leadership, coordination, and limited financial assistance. That in turn has weakened the contribution of the states. The federal government must "support your local police," even if that means downsizing the drug war army. The police dollars would bring a greater return than those spent on federal agents.

Mayors are the elected officials closest to the crime problem and most responsible for the police. They deserve the understanding and assistance of the governors and state legislatures as well as the president and the Congress. Until policing is upgraded and better organized, every citizen is a victim of preventable crime and violence.

*Patrick V. Murphy is director of the Police Policy Board, U.S. Conference of Mayors.*

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# The Community Corrections Response to Crime

Warren I. Cikins

**T**he massive government expenditures in response to high crime rates affect other vital services, such as delivery of health care, education, and low- and moderate-income housing programs, the lack of which, in turn, affects crime. State and local correctional budgets are growing for many reasons.

## Crime and Prisons

The argument is made that to reduce crime more prisons should be built and more people incarcerated. It is assumed that "career criminals" can be identified, and that if these criminals are imprisoned, the crime rate will drop sharply. Scholars have asserted that doubling prison populations would be in the public interest. Sophisticated analysis is done to determine the relative cost of crime compared to the cost of incarceration. Prisons are seen as a good investment in terms of the public and private savings obtained. The fact that crime statistics continue to rise seems to get lost in the rush to incarcerate. So does that fact that prison costs are tangible and so-called societal savings are intangible.

The United States has higher crime rates per capita and a larger percentage of its population behind bars than any other industrialized nation. Over-reliance on mandatory minimum sentences, sentencing guidelines that lead to longer average prison sentences, rising penalties for drug use and abuse as well as drug distribution, and numerous other "tough on crime" approaches contribute to this situation.

Evidence that the situation cannot continue is easy to obtain. There are about 820,000 persons in state penitentiaries, more than 400,000 in local jails, and a number approaching 100,000 in federal prisons. More than 10 million persons are processed through correctional facilities every year or have related correctional experiences. In the federal prison system, there were 25,000 persons incarcerated in 1980, approaching 100,000 for 1995, and probably 125,000 by 2010—a fivefold increase in 30 years. Extrapolating similar data for the nation's incarceration trend, if we continue on this course we would have more Americans in prison than out by 2053. Obviously, this cannot be allowed to happen.

## Community Corrections

Community corrections came into existence some years ago as a means of providing sanctions either as an option to incarceration or as a transition back into the community. The federal government made a commitment to this option by creating a Community Corrections Division of the National Institute of Corrections in the Department of Justice. This unit provides technical assistance to states that are struggling with prison overcrowding or huge cost increases. The National Association of Criminal Justice Planners promotes state community corrections acts (some 19 states have adopted such acts). The American Bar Association Section of Criminal Justice also has been a national leader in the effort to utilize community corrections options or "model laws." The National Association of Counties and the National Governors' Association are also in the vanguard of those viewing community corrections with favor.

Despite the wide support for the concept of community corrections as an alternative to imprisonment, opponents who view prison as a vital part of punishment have attempted to discourage the movements, even attacking the words "community corrections." To offset that challenge, comparable terminology has been developed.

One breakthrough work is Joan Petersilia's *Expanding Options for Criminal Sentencing*, prepared for the Rand Corporation in 1987. She employs the term intermediate sanctions to examine the options available to punish offenders without imprisonment. A major national conference on intermediate sanctions was held by the National Institute of Justice in the mid-1980s, and the Bush administration conducted a Summit on Crime in 1991, at which intermediate sanctions were highlighted. The basic point is that many corrections specialists of all political persuasions and ideologies have come together to support a range of options to imprisonment.

The late Ben Baer, former chairman of the U.S. Parole Commission, in the late 1980s assembled a group of interested officials of public and private entities in an organization called the National Committee on Community Corrections (NCCC). About 40 persons representing federal, state, and local governments, a federal judge, national corrections organizations, academic criminologists, private research organizations, legal organizations, foundations, and other related organizations, meet periodically to promote community corrections and reinforce each other's efforts. (NCC recently released *The National Committee on Community Corrections: A Proposal for Action*.)

This group has gradually grown in importance, reflecting a new climate for change in traditional methods of dealing with crime. The nation is gradually realizing that it can never build enough prisons to reverse criminal trends. Much needs to be done to educate the public to the value of intermediate sanctions or community corrections. They should serve as a way station to a societal commitment to reducing causes of crime. Improvements in housing, health, education, and employment should go a long way toward making a difference.

### Types of Community Corrections Programs

What are community corrections programs or intermediate sanctions? Joan Petersilia distinguishes between formal programs, such as intensive probation supervision, house arrest (with or without electronic monitoring), shock incarceration, split sentencing, and intermittent incarceration, on the one hand, and informal programs, such as community service sentencing, police-probation cooperatives and community network teams, residential diversion and revocation centers, client-specific sentencing, and victim-offender mediation, on the other hand.

NCCC provides a somewhat different breakdown of the options. First, there are the highly restrictive programs, requiring the offender to stay at a "half-way-house" or low-security correctional facility in the community, or assigning offenders to home confinement governed by an extensive list of rules and regulations. The home confinement programs break down into three degrees of severity: curfew, detention, and incarceration.

Before elaborating on these options, it is important to reemphasize that the community corrections approach is punitive, carefully calibrating the punishment to fit the crime. This approach which is applied at various points in the criminal justice process as is deemed appropriate, emphasizes the reintegration of the offender into the

community. Generally, a community corrections program is designed for low-risk, nonviolent offenders. Once a legislature enacts such a program, it is generally the role of the judge to decide where the offender fits best, based on as much relevant information as can be made available. Such information is provided by the probation or parole systems, or by separate systems established by the Community Corrections Act.

Different elements of community corrections acts are utilized by federal, state, and local entities. Careful thought is given to fostering systematic planning and programming to enable use of a broader range of sanctions. The pressures of runaway imprisonment or runaway cost increases are forcing many policymakers to give community corrections more priority attention. State community corrections acts usually provide technical and financial assistance to state and local corrections officials. A sound management framework is crucial to the successful application of the law.

**Intensive Supervision in Probation.** Petersilia gives priority attention to intensive supervision in probation (ISP), which is related to the concept of being "socially cost effective," of preventing the breakup of offenders' families and family networks, and of enabling offenders to keep jobs. ISP also prevents the adverse effects of being imprisoned. In many cases, there can be some rehabilitation potential, since the offender can be required to undergo alcohol or drug counseling or treatment. Closer than routine supervision also means a stronger "helping hand" for a wrongdoer who needs all the support he or she can get. Later Petersilia studies raise questions about the efficiency of ISP, especially with regard to recidivism, but the benefits outweigh the costs.

**House Arrest.** House arrest, with and without electronic monitoring, is another significant sanction. House arrestees are allowed to leave their homes only for prescribed reasons, such as employment, health needs, church services, performance of community service, and payment of relevant fees. Such an option is more punitive than ISP and is intended to serve as a "last chance" before the offender faces imprisonment. It has the advantage of being flexible, so that it can be used with other sanctions. It also is useful in cases of special needs, such as serious health problems. Interest in home confinement has grown with the development of electronic monitoring, making it easier to keep track of the offender. The offender also may be required to participate in self-improvement programs.

**Shock Incarceration.** Shock incarceration/boot camp is used in lieu of a prison or jail sentence. The offender serves a portion of the sentence in such a facility before being placed on probation or parole. The assumption is that offenders can be impressed with the seriousness of their actions without having to serve a prison sentence. As Petersilia puts it, "part of the appeal of these programs is probably attributable to the traditional feeling that military service can make men out of wayward boys." We have yet to determine, however, how long lasting the effects are.

**Community Service.** Petersilia examines the more informal programs, such as community service sentencing, in a more blanket fashion. These options are justified for pretty much the same reasons as the others, namely, to re-



duce prison overcrowding, to limit costs, and to have some rehabilitative influence. Community service programs are difficult to develop, cumbersome to implement, and hard to manage or oversee. As in other circumstances, special effort must be made to convince the public that the punishment is adequate to the offense. Given all these reservations, community service has the potential of salvaging many wrongdoers before they are lost to society.

### The NCCC Plan of Action

The NCCC *Plan of Action* emphasizes halfway houses as "an established part of correctional thought." They are viewed as "an essential component of the modern criminal justice system." NCCC also points out that home confinement conditions have gradually become more punitive, using:

- 1) *Curfew* to require that offenders be at their residences for specified hours, usually in the evening;
- 2) *Home detention*, requiring the offender to be at home when not working; and
- 3) *Home incarceration*, with the home serving as a prison.

These programs are often supplemented by electronic monitoring (used in 42 states), with a wide spectrum of systems to keep track of the offender. NCCC reviews moderately restrictive programs, such as pretrial supervision or diversion to help the offender overcome wrongdoing tendencies (often involving drug treatment), and post-conviction programs related to probation and parole, designed to "move the offender out of the system only when specific goals have been met." These programs are related to conditions of release, possible risk to the community, and need for correctional treatment.

NCCC points out that:

- 1) There is a strong chance community corrections programs can save money (operating these facilities is usually cheaper than maintaining prisons).
- 2) They enlarge the spectrum of sentencing options (not substitution, but more precise punishment).
- 3) They have the potential to provide greater public safety because imprisonment is likely to make inmates more violent when they are released (as at least 90 percent of them are).
- 4) Community corrections makes available opportunities for offender improvement, such as educational training, drug or alcohol treatment, and job opportunities.

### A Cautious Approach

Petersilia urges a cautious approach to alternative sanctions, indicating that unwarranted and undocumented enthusiasm could lead to greater reliance on some options than their track record warrants. Many questions have only partial answers, such as:

- 1) The expectations of techniques for choosing appropriate offenders for community corrections;

- 2) The assurance that public safety will be enhanced;
- 3) The long-term effectiveness of intermediate sanctions;
- 4) The costs of community corrections and who pays;
- 5) Who is best qualified to manage alternative sanctions; and
- 6) Whether such programs widen or narrow the net of social control.

There also are issues to be resolved related to public acceptance of these programs and the response by victims and offenders families.

Given these uncertainties, community corrections must be given a full trial. The performance of prisons and jails tells us that it would not be difficult to surpass their results. It is no reflection on conscientious prison wardens or county sheriffs to note that overcrowded and underfinanced correctional facilities fall far short of any model of success.

Programs for "housing" inmates must be compared to each other, not to some abstract ideal. Public policy decisionmakers must realize that a credible case can be made for community corrections programs when the programs are carefully crafted. Support from all governments will be needed to promote community corrections, and supportive business and community leaders may well be the key to general public acceptance.

*Warren I. Cikins is senior staff member, Center for Public Policy Education, The Brookings Institution.*

### Medicaid: Intergovernmental Trends and Options

Medicaid is increasing in cost and decreasing in effectiveness in many areas. Medicaid spending nearly tripled between 1980 and 1990 (from \$24.8 billion to \$71.3 billion), and the expenditures are projected to continue to rise sharply. The report identifies major trends in Medicaid and presents recommendations intended to restore the program's original goals and design by (1) increasing state and local roles in Medicaid policymaking; (2) increasing state and local program flexibility; (3) adopting interim modifications to Medicaid and implementing comprehensive health care reform by 1994; (4) transferring local Medicaid administration and financing to the states; (5) transferring the cost of long-term care to the federal government under Medicare, and (6) improving the targeting of federal Medicaid funds. The recommendations are intended to slow the growth of Medicaid expenditures for the states, allow the states to serve the health care needs of their populations better, and bring more accountability, balance, and certainty to Medicaid service delivery and financing.

A-119                      1992                      \$10

(see page 36 for order form)

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# States Expand Crime Prevention and Law Enforcement Efforts

Nolan E. Jones and Gwen A. Holden

**F**ew concerns are more important and pressing than the security of citizens in their homes and on the streets. In recent state of the state addresses, governors across the land have reaffirmed their commitment to public safety issues by announcing new and expanded crime prevention and law enforcement programs and initiatives. Indeed, criminal justice—along with improved education and health care, the creation of new jobs, and the environment—has become a top priority for most governors.

## An Intergovernmental Justice System

States are taking the lead in working with counties, cities, and municipalities to define statewide crime problems, from urban violence to white collar fraud, and to develop crime-control objectives. States also are forging new relationships with the federal government to expedite these new strategies and programs, realizing that the crime problem is national as well as state and local.

There are certain areas of crime control that are more appropriately handled by the federal government. For example, while all governments conduct research on the criminal justice system in their particular jurisdictions, the federal government is uniquely positioned to develop and evaluate alternative methods of improving crime control and to disseminate information on the best practices. We all recognize and appreciate the need for objective, reliable, and accurate data on crime, victims, perpetrators, and criminal justice system activities. The federal government should disseminate research and information about these activities, giving primary attention to data that is useful to state and local criminal justice officials who have responsibility for dealing with crime. Federal resources should support technical assistance and demonstration projects that exemplify successful crime control programs to promote investment in these programs by state and local governments.

The recent trend toward placing crimes that are generally prosecuted at the state and local levels in federal jurisdiction has caused concern among state and local officials. Because these crimes have high visibility, many believe that a federal solution is appropriate. However, this approach not only destroys the system of federal-state relations, but also denies primary responsibility to those officials who are closer to the crime. It also overloads the federal justice system. The federal court system, with its rapidly expanding caseload, is a vivid example of an overloaded system as more and more activities are taken from state courts. U. S. Chief Justice William H. Rehnquist expressed this concern in his welcoming remarks to the recent National Conference on State-Federal Judicial Relations:

Our federalism also requires continued sensitivity so that federal courts do not cause friction by interfering with the legitimate interests of state court systems. But federal courts are not entirely free agents in this area; both their jurisdiction and their substantive mission are in large part subject to the direction of Congress. (*Virginia Law Review*, November 1992).

Chief Justice Rehnquist realizes that the federal judiciary cannot and should not be involved in every dispute that is defined for "national action." The federal government must have confidence in state and local criminal justice systems to maintain a healthy balance in our federal system of government. Although there are many vexing social problems facing the justice system, federal, state, and local officials should work out mutually agreeable ways of dealing with them. As Chief Jus-

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tice Rehnquist concluded, "The nation can no longer afford the luxury of state and federal systems that work at cross-purposes or that irrationally duplicate each others' efforts."

Another concern in the area of intergovernmental crime control is the process by which the Congress authorizes a new program without appropriating funds for its implementation. Citizens who don't understand the significance of this problem often confront state and local officials about services from these programs without realizing that funds have not been made available. The Congress should be more cognizant of this problem and develop new programs only when funds are available to implement them.

### The Governors' Proposals

Most funds for implementing crime control programs are provided by state and local governments. In their state of the state addresses for 1993, many governors identified the need for more crime control, including resources to keep violent adult offenders behind bars through the construction and expansion of prison facilities. Governors also are calling for tougher sentencing policies for violent acts such as carjacking and bias-motivated crimes. Meanwhile, they are stepping up efforts to promote rehabilitation, community service, and other less costly alternatives for nonviolent offenders so that prison space can be reserved for the most dangerous criminals. To pay for prison expansion and other new programs, governors are imposing new taxes, shifting funds from other state projects, and relying on reserve funds.

Meanwhile, state chief executives are attempting to reduce recidivism among juvenile offenders by calling for new laws barring youths from carrying firearms and for stricter sentencing policies for repeat juvenile offenders. Governors also are proposing funding for the construction of "boot camps," which are restitution centers that combine a highly disciplined basic training regimen with drug treatment and rehabilitation.

**Funding the System.** Funding cuts in the *Texas* budget will mean more than \$3 billion in savings, money that will support Gov. Ann Richards' commitment to keeping adult violent offenders behind bars and getting nonviolent offenders into rehabilitation programs. Her proposed budget for fiscal 1994 provides full funding for the operation of 25,000 new prison spaces authorized by the state legislature two years ago and approved by the voters last November. In addition, the governor's proposed budget includes \$122 million for the establishment of in-prison drug treatment programs.

In *Florida*, Gov. Lawton Chiles' "Safe Streets" initiative calls for 21,000 new prison beds over the next five years. Under the governor's plan, a 25¢-per-pack cigarette tax would be used to support bond issues to pay for the construction of 17,750 prison spaces. Bonds backed by the \$250 million that the cigarette tax is expected to generate annually will finance the building and operation of the additional 3,582 prison beds. The

remaining tax revenue will cover operating expenses of nearly \$220 million each year after all the beds are built.

In addition to funding prison beds, the cigarette tax would provide money for diversion programs, such as drug treatment facilities and community-based work camps, leaving the prison beds free for the state's most violent criminals. Under his proposal, Governor Chiles also calls for the elimination of "basic gain time," the mechanism by which prisoners receive up to 15 days off their sentence for every month they serve. The governor maintains that by establishing such a comprehensive program the state can "shut down the prison time machine that in the past has too quickly sent violent inmates back to their future."

*Maryland* Gov. William Donald Schaefer's budget proposal calls for an increase in public safety funding. Despite the state's tight budget, Gov. Schaefer said that escalating crime rates and increases in prison populations prompted him to propose a \$45.3 million increase in public safety funds for fiscal 1994. This 7.8 percent proposed increase brings the general fund allowance for the Department of Public Safety and Correction Service to \$624 million. Governor Schaefer's budget proposes to fund these crime programs by reducing the budgets of other state agencies and by relying on state reserve funds, not by imposing new taxes.

The budget proposal includes increased funding for new prison facilities. Nearly \$7.8 million has been provided for two new housing units at the Maryland House of Correction, and an additional \$6.1 million has been allotted for three dormitory units at the Eastern Correction Institution. The proposed allowance also includes substantial funding for the establishment of a statewide court-ordered program to increase the number of nonviolent offenders performing community service in lieu of jail time. The governor said that the program would ensure that the offenders complete assigned community service projects and comply with other terms of alternative sentencing arrangements.

*New York* Governor Mario Cuomo also proposed policy and funding changes that would ensure that prison spaces are reserved for the state's most violent criminals. Governor Cuomo said he will introduce legislation that would give judges the discretion to impose a sentence other than prison for nonviolent offenders. In addition, the governor has proposed eliminating the current administrative hearing process for parole violators and changing the state's drug felony sentencing statutes.

**Sentencing.** Tougher sentences are proposed not only in *New York*, but across the nation. *Arizona* and *Texas* are among the states seeking legislation that would eliminate probation as an option for violent offenders and require offenders to serve their entire sentences. *Texas* Governor Richards' proposal also includes provisions that would strengthen the state's capital murder statute by giving juries the option of sentencing offenders to life without parole.

In *Maryland*, Governor Schaefer says he will look at legislative proposals that would reduce the lengthy appeals process in death penalty cases.

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**Handgun Access.** Several states are considering laws that would restrict access to handguns. *Virginia* Governor Douglas Wilder proposed a statute that has been passed by the state's general assembly, effective July 1, which allows an individual to purchase no more than one handgun in any 30-day period, although it recognizes certain legitimate exceptions. *Maryland* Governor Schaefer is calling for a ban on assault-style semiautomatic handguns. The governor promised to keep pushing to restrict access to guns with a ban on assault pistols and by limiting gun shows.

**Police-Community Partnerships.** Some states are expanding local police personnel while emphasizing police-community relationships to step up enforcement efforts. For example, *New Jersey* Gov. Jim Florio's proposed crime package includes \$4.6 million to establish police-community partnerships in six cities. Under the proposal, funds will be used to put more police in neighborhoods, to target and apprehend members of violent street gangs, to provide more after-school programs to keep children off the street and in safe havens, and to develop a new state police class. The partnerships, which seek to strengthen the bond between the community and law enforcement officials, operate in several *New Jersey* cities. Governor Florio says that the partnerships will help to empower inner-city residents, shield children from violence, and break the chain of criminal behavior.

**Carjacking.** Increased carjacking incidents have prompted several governors to propose tough new laws. The *Maryland* governor's proposal, for instance, would establish carjacking as a crime separate from car theft. The new crime would carry a mandatory 15-year penalty. *Alabama* seeks a new carjacking policy similar to the federal policy outlined in the *Anti-Car Theft Act of 1992* (P.L. 102-519). Under the law, taking a motor vehicle by force, violence, or intimidation carries a mandatory 15-year prison sentence, and a mandatory life term of imprisonment if the victim is killed. The act also makes it a federal offense to operate a "chop shop" for the explicit purpose of altering stolen cars for resale. *New Jersey* and *South Carolina* are among the other states proposing stiffer carjacking penalties.

**Bias-Motivated Crime.** The governors of several states are considering new ways to stamp out bias-motivated crimes. In *Oregon*, Gov. Barbara Roberts has proposed the establishment of a human rights commission. She noted the need for the commission when she recalled "a brutal crime of hate in the state's capital," in which two residents were killed when a firebomb hit their apartment. She said the commission will fight hate crimes and identify and remove barriers related to discrimination by race, national origin, gender, religion, or sexual orientation.

*New Jersey* Governor Florio renewed his commitment to the state's county-by-county fight against bias-motivated crimes, suggesting that "our differences should be the cause for celebration, rather than

separation." The state has established a network of county human relations commissions that review complaints about bias-based harassment and crimes. The county panels have no staff, salaries, or political ties, and are composed of law enforcement officials and community leaders. They meet about once a month to inform county officials about street-level concerns regarding race and prejudice.

Other ongoing efforts cited by the governor to deter bias-motivated crime include mandatory "reeducation" classes for youths who commit crimes and the appointment of a designated officer at all police departments to take complaints of ethnic, religious, or racially motivated crime.

**Drunk Driving.** *Georgia* Governor Zell Miller has offered a proposal to crack down on drunk driving. He has proposed legislation that would require immediate driver's license suspension for first-time offenders. In addition, the proposal gives judges the option of requiring ignition interlock devices that lock a car's ignition until the driver passes a breath test.

**Juvenile Justice.** Mindful that an ounce of prevention is worth a pound of cure, many states are channeling more resources into reforming their juvenile justice systems. Citing the six-fold increase since 1987 in the number of 19- and 20-year-olds in *Tennessee's* juvenile justice system, Governor Ned McWherter has suggested removing older offenders from juvenile centers. The proposal would help ensure the safety and fair treatment of younger offenders.

In an attempt to deter youths from exploiting any leniency in *Arizona's* juvenile court system, Governor Fife Symington has recommended that the state end the practice of treating violent and repetitive offenders as first-time offenders when they commit new crimes after reaching age 18. Governor Symington also calls for a new law that would impose harsher penalties on youths bearing firearms. Under the proposal, there would be increasingly severe sanctions for repeat violations. In addition, the proposal directs the state board of education to approve a firearm safety training course suitable as a voluntary offering by local school districts.

In *Virginia*, Governor Wilder seeks a law that would prohibit juveniles from possessing handguns. The governor also has requested several procedural reforms in the state's juvenile system, such as mandatory fingerprinting of all juvenile offenders. Under the proposal, local juvenile agencies would be authorized to share data about serious juvenile offenders.

Several juvenile reforms have been proposed for *Texas*. Governor Richards' proposed legislation would create drug- and gun-free zones around schools, expand substance and treatment programs to include juvenile offenders, and authorize juvenile probation officials to identify and replicate programs that have been successful in reducing recidivism among youths.

Other states plan to better rehabilitate delinquent youths through the construction of military-style boot camps. Governor Miller of *Georgia*, whose state has created 2,172 boot camp beds in the last two years,

explained that the camps are highly effective and much cheaper than prisons. The governor noted that while it costs \$2,500 per bed to build a boot camp using inmate labor, it costs nearly \$27,000 per prison bed. Further, it costs \$42 a day to house, clothe, and feed each prison inmate, but \$25 a day for offenders in boot camps. In *West Virginia*, Governor Gaston Caperton says he will request funds to open boot camps for young first-time offenders.

*Alaska's* "Operation Hope" targets young offenders—usually between the ages of 18 and 25, who have been convicted of drug and alcohol possession or abuse—and emphasizes rehabilitation. Governor Walter Hickel says that those offenders who respond well to this program may be placed in vocational schools and even post-secondary education.

**Other State Justice Initiatives.** Other criminal justice initiatives mentioned in state of the state addresses include the enactment of anti-stalking legislation (*Texas*); the establishment of new and specialized drug and homicide courts (*Wisconsin*); the authorization of joint trials and preliminary hearings for defendants charged with crimes arising out of the same transaction (*Virginia*); and the establishment of a corrections population management commission (*Hawaii*).

#### The State-Federal Partnership

Regardless of how varied they are, these initiatives and programs rely on a partnership between the states

and the federal government. It is a partnership of necessity that takes into account regional differences as well as broad constitutional commonalities. It is the differences that cause states to have problems with federal restrictions, such as set-asides, earmarking, and mandates. These restrictions often reduce flexibility in establishing programs geared to specific local or state problems by requiring that only certain federal programs should be implemented, or by requiring that a percentage of federal funds be channeled into specific problem areas. The implicit assumption in these requirements is that criminal justice problems are essentially the same in every state and locality and that each jurisdiction should address the specific problem in a specific way. Many states have argued that this assumption is wrong, and that set-asides, earmarking, and mandates reduce the effectiveness of federal funds to meet their most critical needs.

Governors have assumed active leadership roles in developing and implementing statewide programs to control crime. To succeed in this effort, coordination and cooperation among state, local, and federal governments are essential. Promoting domestic tranquility must be a top priority for all public officials.

*Nolan E. Jones is director of justice and public safety, National Governors' Association. He was formerly assistant professor of political science, University of Michigan, Ann Arbor. Gwen A. Holden is executive vice president, National Criminal Justice Association (NCJA).*

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# Criminal Justice Teamwork

Vivian E. Watts

**F**ew elected officials have had direct contact with the criminal justice system. For example, only 16 percent of state legislators are attorneys, and many of these do not practice criminal law.<sup>1</sup> Public administrators are seldom any more experienced with the justice system. According to one survey, fewer than 20 out of 7,500 city managers have an emergency services background.<sup>2</sup> Even specialists in governmental studies have significant gaps in their understanding of the criminal justice system because of its complexity. As one planner commented, "Perhaps the most important thing that the criminal justice planner has to say about the [trial-sentencing] sector is that we know very little about it."<sup>3</sup>

Despite such lack of experience, state, county, and city officials are finding that they cannot afford to be spectators and avoid dealing with criminal justice because budget increases to fight crime simply have grown too fast.

Criminal justice costs escalated faster than any other area of government spending between 1973 and 1990 (232 percent in constant 1985 dollar value). In current dollars, state own-source funding increased 759 percent; county, 490 percent; and municipal 330, percent. Due to longer mandatory sentences, the federal government, which prosecutes 6 percent of serious crimes (felonies), is beginning to experience cost increases for its criminal justice activities comparable to state spending increases. Total federal spending increases have been kept to 345 percent by cutting law enforcement grants to states and localities.<sup>4</sup>

Despite this increased spending on more arrests, prosecutions, and imprisonment by all governments, the amount of reported crime remains as high as ever. The public wants to know why.

Officials in general government who try to address the high cost, lack of results, and public discontent with criminal justice have to overcome difficulties in:

- Communicating openly with criminal justice officials, gaining their trust, and holding them accountable for results;
- Building the case for crime prevention activities and budgets;
- Ensuring that the criminal justice system is able to carry through with appropriate sanctions;
- Documenting what works; and
- Estimating program needs and planning realistically to meet them.

Success in controlling crime and the costs of criminal justice programs will be related directly to how well government officials address these challenges.

## Working with the Criminal Justice Community

Criminal activity can be reduced, but it will not stop. Any "success" that public officials achieve inevitably will be mixed with failures. The negatives often seem to outweigh the successes, causing many public officials to echo public concerns rather than to propose well-reasoned solutions.

For example, when a prison administrator was asked whether the governor, whom he had described as supportive, had any background in criminal justice, he replied, "He is too smart for that . . . too clever. . . . He knows enough governors to know that corrections is something that can only hurt you." A senior state legislator doubted that even half of his colleagues had ever spoken with a judge about criminal justice. County elected officials indicated that they talk only to other elected officials about criminal justice at budget time or when there is an inescapable crisis. State legislators who might regularly show up at a discussion on local day care or education "don't want to be associated with negative issues like alternatives to incarceration."<sup>5</sup>



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When elected government officials decide they must become involved, they face public criticism and, often, an equally unfriendly reception from criminal justice officials. Lack of experience with criminal justice technical language and procedures is only part of the problem. Officials report that a language of fear seems to be used strategically in an attempt to close out unaccustomed and unwelcome inquiry: "You will be responsible for criminals roaming free." "How can you question not arming law enforcement officers as well as the criminals are armed?" "You just don't understand the life and death world we're dealing with."

These statements reflect several traditional sources of isolation of criminal justice officials from general government officials. Interpretations of separation of powers and America's adversarial criminal justice structure, which is designed to protect individuals against arbitrary findings of guilt, lead some judges, prosecutors, and public defenders to resist cooperation with the other branches of government. The fact that philosophies of corrections encompass great extremes, and that managers are appointed rather than elected, may make correctional officials "avoid setting goals or enunciating values that might create [such] controversy."<sup>6</sup> Careers spent entirely in one jurisdiction, which is typical for elected judges, sheriffs, prosecutors, and many police, can produce insular perspectives. Finally, mistakes by those who are not experienced or who do not know all the facts can, indeed, be life threatening.

Nevertheless, general government elected officials have the responsibility and authority to break the traditional view of criminal justice as a world apart. They are responsible for raising taxes and, therefore, for the wise expenditure of public funds. They have the authority to legislate and/or approve operating policies and budgets. They are also the ultimate ombudsmen for public concerns and molders of public opinion.

With this duty and right to be involved in criminal justice, general government officials face the task of determining who is accountable. " 'Fragmented,' 'divided,' 'splintered,' and 'decentralized' are the adjectives most commonly used to describe the American system of criminal justice."<sup>7</sup> This fragmentation, designed to protect citizens from arbitrary prosecution, too often means that no one is in charge of results. For example:

- Almost all police and sheriff departments report only arrests; they do not assess how often arrests lead to convictions, despite wide variations among police agencies served by the same prosecutor.<sup>8</sup>
- Increased arrests, prosecutions, and tough sentencing laws have not resulted in offenders serving appreciably more time because of lack of prison capacity in many states.<sup>9</sup>
- Education and treatment efforts started in prisons, jails, and juvenile facilities seldom have carry-through with community agencies after the prisoner is released; thus, the rate of return to crime remains high.

General government officials are in the best position to promote a systemwide approach in which each player is accountable for:

- Efficiently using facilities and the time of personnel in other agencies;
- Carrying through on punishment and treatment decisions; and
- Reducing criminal activity rather than just punishing criminal acts.

Some officials have used budget leverage—when the simple power of persuasion attached to their position has not sufficed—to establish interagency bodies requiring participation of key officials. At other times, political relationships have facilitated intergovernmental cooperation to bridge disparate municipal, county, and state criminal justice functions. Highly visible leaders have coopted key officials by involving the public in exploring policy options with a systemwide perspective. An important by-product of these efforts is the development of mutual trust, which occurs when general government officials do not attempt to micro-manage specific solutions, but use the credibility of criminal justice officials to determine how each agency can better contribute to the functioning of the system. Focusing on broad criminal justice participation also is an effective way to reduce the isolation between criminal justice and general government officials.

#### Promoting Crime Prevention

As general government officials become more informed about what is undercutting and what is contributing to criminal justice effectiveness, they will find that, "The criminal justice system can't stop crime . . . only deal with it." Criminal justice practitioners will look to the general government to take responsibility for failures of general government programs, such as school dropouts, inadequate public housing, lack of jobs, lack of drug treatment capacity, lack of prenatal and child nutrition, and inadequate family and mental health services.

Most general government officials will agree. Their biggest problem is to find funds for prevention at the same time they must continue to fund criminal justice system costs driven by past inadequacies. This dilemma creates a compelling reason to take on traditional turf battles. Compared to raising taxes, many elected officials will find it easy to break through traditional definitions of responsibility and clientele, and to insist that non-criminal justice agencies shape programs to address the effects of adult crime on the young; multiple problems of offenders and potential offenders, and demoralization of citizens and traditional community structures in neighborhoods where crime is high.

#### Ensuring Carry-Through

While the response to crime needs to begin with prevention, it must be anchored by surety of punishment. Not only does society's safety and sense of justice

demand it, but many offenders will not take intermediate sanctions and rehabilitation efforts seriously without the threat of incarceration.

The positive leverage of this threat will exist, however, only if:

- There is a range of alternatives available;
- There is enough room in treatment and education programs;
- There is adequate supervision to monitor performance and respond with stronger control when necessary; and
- The length of time spent in prison can reflect the likelihood of continued criminal behavior, rather than be unrelated to the individual's actions.

General government decisions are essential to create all of these conditions.

For example, tough sentencing laws and increased law enforcement expenditures must be accompanied by increased court and correctional capacity. Strengthening fiscal impact statements by requiring funding of affected programs is one means to ensure that front-end expenditures will not be wasted through turnstile case processing or early releases because of prison overcrowding.

It is particularly important that probation staffing be related to case increases. During most of the last decade, the use of probation grew faster than imprisonment. However, probation staffing increased only half as much as the number of probationers<sup>10</sup> because new prisons and jails received priority funding. It should not be surprising, therefore, that the proportion of offenders sentenced to probation has decreased in the last three years, further escalating incarceration costs and overcrowding.<sup>11</sup> When seeing a probation officer less than once a month becomes meaningless, judges see more relatively minor offenders coming back before them repeatedly and finally have little choice but to sentence the felon to prison.

### Determining Success

General government officials trying to ensure that there is a range of sentencing options and enough room in treatment and education programs find little documentation of how effective the options are. The sentencing options available in most states have been described as "the choice between an aspirin or a lobotomy."<sup>12</sup> As they try to make reasoned judgments in expanding options, general government officials will find:

- Lack of documentation about what works because resources are focused on program delivery rather than on evaluation; and
- Overuse of the highest level of control or treatment, referred to as net-widening.

While it is important to require basic follow-up, general government policymakers also have to make expedient decisions based on the facts at hand. To do so,

they must examine the conditions and definitions used in describing programs and insist, for example, on definitions of nonviolent, the length of follow-up, the purpose of drug screening, and what constitutes success. Many general government officials also will want to insist on procedures for selecting participants that do not encourage net-widening. If participants are selected to ensure their success, the new program will look good and raise few public safety concerns, but cost savings depend on targeting failures in existing programs.

Some answers will not meet lay expectations, but it is better to be informed of these realities early and avoid overselling the program to the public and/or have the opportunity to determine whether it is worth the investment to strengthen the program. The most successful involvement has come when policymakers operate under these simple rules:

- Don't kill the messenger.
- Don't micro-manage.
- There are no successful programs, only successful program administrators.

This means developing a game plan that uses the strength of the players.

Documentation also reveals basic weaknesses. Over a decade ago, the National Academy of Sciences released a report based on four years of research and discussion about the effectiveness of criminal rehabilitation. The academy found four factors that limit meaningful evaluation:

1. *Programs screen participants inadequately.* A program may be the best chance of success for one type of person and, yet, appear to be a waste because there are participants for whom the program offers no motivation.
2. *Programs are usually single faceted* (i.e., vocational training), while there are many other factors that may lead to continued criminal activity.
3. *There are often discrepancies in what the program was supposed to do and what was actually done.* This is often the case when trying to "sell" a model program. It is difficult to maintain "the integrity of the original program model as it is adapted by practitioners to local conditions, agency goals, and funding restrictions, . . . [and change the] routines of the practitioners."<sup>13</sup>
4. *Too often, the programs are inherently weak.* "Why would one expect that one hour per week of group therapy with a poorly trained leader and unwilling participants would produce a major behavior change in incarcerated felons, especially considering the powerful effect of the prison background?"<sup>14</sup>

If general government officials do not address these chronic weaknesses in criminal justice programs, tax

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dollars will continue to be diverted into superficial quick fixes instead of meaningful change.

### Estimating and Planning to Meet Future Needs

Finally, whether it is responding to business as usual or forging new policy, general government officials expect sound estimates of need. Many, therefore, have been frustrated in the last 15 years of extraordinary growth to hear repeatedly, "Last year's estimates are way off." They feel trapped in a cycle of reactive budgeting rather than proactive planning.

Criminal justice forecasting is at least as complex as economic forecasting. It depends as much on controversial, subjective assumptions as it does on sophisticated statistical trend analysis and demographics.

Furthermore, most criminal justice system effects are not straight line but are compounded. Projections of caseloads or of incarcerated populations must take into account a wide range of factors, such as types of crimes committed, reporting rates, arrest rates per type of crime, prosecution trends, trends in the average length of sentence being given for each type of crime, and trends in the proportion of repeat offenders in each crime category (since this would affect length of sentence or use of probation or parole).

General government officials, therefore, will have to invest in accurate data collection, because data about individuals frequently are not compiled in a form that is usable across agencies, and they will have to fund the needed computer capability. In many instances, this will involve significant intergovernmental coordination because the data are generated by different units of state, county, and municipal government.

However, as crucial as it is to start with an objective, sophisticated analysis of a comprehensive data base, subjective review is equally important given the dynamics of crime and the political response to it. Different assumptions frequently produce distrust between legislators and the executive branch; between budget analysts and criminal justice agencies; and between and among state, county, and municipal governments. Broad participation in at least an annual review process will lay the basis for:

- Developing different projections to serve the different circumstances of various agencies and governments, while strengthening the accuracy of the main projections;
- General government awareness of policy ramifications and options; and
- Adequate resources to implement policies.

### Conclusion

The following observation appeared in a 1988 National Association of Counties newsletter:

[P]ublic officials should spend less time on consideration of the solution and more time on

an improved understanding of the problem. In too many places, there is an infatuation with innovation and a "cure-all" quality assigned to programs and policy choices which have limited value for long term restructuring of the corrections system.<sup>15</sup>

The statement encapsulates the demanding challenge that must be met by general government officials if they are to fulfill their unique leadership and ombudsman roles.

The rhetoric of a Monday morning quarterback may help an official get elected but, to produce results, it must be communicated effectively to the players in the criminal justice system and in public and private agencies who can address conditions that foster criminal activity. Typically, there has been no coach or game plan, and authority will not automatically be granted to one who assumes the role. Authority must be earned through understanding the totality of the game and getting players to focus on strategies that will strengthen the effectiveness of each position.

*Vivian E. Watts is a former Virginia legislator and Secretary of Public Safety.*

### Notes

<sup>1</sup> Martha A. Fabricius and Steven D. Gold, *State Aid to Local Governments for Corrections Programs* (Denver: National Conference of State Legislatures, April 1989).

<sup>2</sup> Leonard Matarese, International City/County Management Association Panel, June 17, 1991.

<sup>3</sup> Comptroller General of the United States, *State and County Probation: Systems in Crisis* (Washington, DC: U.S. Department of Justice, Law Enforcement Assistance Administration, 1976) p. 3.

<sup>4</sup> Computed from U.S. Department of Justice, Bureau of Justice Statistics (BJS), *Justice Expenditure and Employment in the U.S.* (Washington, DC, 1991 and 1984).

<sup>5</sup> Confidential interviews, 1990.

<sup>6</sup> Alvin Cohn, "The Failure of Correctional Management," *Crime and Delinquency* 19 (July 1973): 327.

<sup>7</sup> National Advisory Commission on Criminal Justice Standards and Goals, *A National Strategy to Reduce Crime* (Washington, DC, 1971), pp. 31-32.

<sup>8</sup> Joan Petersilia, Allan Abrahamse, and James Q. Wilson, *Police Performance and Case Attrition* (Santa Monica: RAND, 1987).

<sup>9</sup> U.S. Advisory Commission on Intergovernmental Relations, *The Role of General Government Elected Officials in Criminal Justice* (Washington, DC, 1993).

<sup>10</sup> Computed from BJS, *Justice Expenditure and Employment in the U.S., 1988, 1985*, and "U.S. Probation and Parole, 1990," *BJS Bulletin*, November 1991.

<sup>11</sup> Computed from "Probation and Parole, 1990."

<sup>12</sup> Larry Krisberg in Andrew H. Malcolm, "More Cells for More Prisoners, But to What End," *New York Times*, January 18, 1991.

<sup>13</sup> Susan E. Martin, Lee B. Sechrest, and Robin Redner, *The Rehabilitation of Criminal Offenders: New Directions for Research* (Washington, DC: National Academy Press, 1981), p. 1-21.

<sup>14</sup> *Ibid.*, p. 1-11.

<sup>15</sup> Mark Corrigan, "The Politics of Sentencing Reform," *County News*, September 12, 1988, p. 13.

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# A Fiscal Note

## Time for a VAT or a National Fiscal Policy?

Philip M. Dearborn

Over 21 years ago, in his 1972 State of the Union Message, President Richard M. Nixon asked the Advisory Commission on Intergovernmental Relations (ACIR) to study the desirability of a national value added tax (VAT). This Republican president was considering a VAT for the purpose of reducing the reliance on property taxes as a source of funding for public schools. The tax was seen as a means of equalizing school financing to provide more resources to poor districts. In a letter to ACIR, President Nixon stated that, "One of the greatest challenges this Nation faces today is the need to reform our system of financing public education. . . ."

Democratic President Bill Clinton has apparently considered a value added tax to finance health care reform, although it may not be in the final plan. He has described the health problem as "a crisis that threatens the security of every American family and business."

In both instances, a VAT was considered to solve a national problem of great significance. Will the tax fare better this time around than it did earlier? The 1972 ACIR study suggests that there are some reasons why the tax may prove appealing, but the problems found then still pose obstacles to enactment of a VAT.

Some people object to a VAT simply because they do not understand how it would work, and perhaps for good reason. There are three general types of VAT, each with different and difficult variations on how capital assets are treated. Then there are three different ways the tax can be calculated: by subtracting purchases from gross receipts; by adding up payments to factors of production; and by applying the rate to sales and crediting against its liability the tax paid to suppliers. The tax also may be separately stated to the purchaser or included in the purchase price.

There are arguments for and against each of the options. Although major decisions would have to be made about exactly how the tax would be structured, it is not necessary to resolve these questions to understand the basic arguments for and against the tax.

In support of the tax, ACIR found in 1972 that the total tax burden in the United States was relatively light compared with that in other industrialized countries, leaving room, from this perspective, for additional federal taxes. ACIR found further that because the bulk of federal revenues came from taxes on individuals and corporations measured by income, a federal tax on consumption, such as a VAT, would be appropriate if the federal government needed significant additional revenues. Given that the United States still ranks comparatively low in tax burden and has a high dependence on taxes on income, these findings are still valid in 1993, although the American public may not agree with them. For example, an April 1993 *Washington Post* poll found that only 45 percent of respondents would support a 5 percent VAT to finance health care reform. ACIR also found support for a consumption tax because it might provide an increased incentive for individual savings and some spur to capital formation. It did not find that a VAT would be of any benefit to exports, a matter that has become more important to American economic policy since 1972.

Foremost among the objections to the tax is that it hits hardest at lower income individuals because they spend a higher portion of their incomes on taxable purchases. Although the 1972 report found that income tax credits or exemptions for various types of purchases could reduce this problem, such solutions add to the complexity of the tax and reduce its net yield.

From an intergovernmental view, ACIR found, "rightly or wrongly,"

that state and local officials see a VAT as an intrusion on their use of the sales tax, and that opportunities for coordinating or integrating state and local sales taxes with a federal VAT would be slight. ACIR also pointed to overlapping taxes, such as personal income taxes, that federal, state, and local governments impose without serious problems. Nevertheless, there is little doubt that today's state and local officials would see the tax as an intrusion on their tax turf.

The Commission found that a VAT would lead to a rise in prices equal to the amount of the tax if it were fully shifted forward and accompanied by an accommodating monetary expansion. If the latter two conditions were not met, the tax could increase unemployment if it caused businesses to be less profitable. The inflationary effect could even be more than the actual tax rate because various wage contracts are tied directly to the price level via escalator clauses.

A major problem that has received little attention in the current discussion is the cost and difficulty of administering the tax. American businesses would need to keep additional records. It was estimated in 1972 that some 6-9 million businesses would be required to file additional tax forms. This compared to the present 1.5 million corporate income tax filers. Some of these problems could be reduced by exemptions. For example, ACIR found that there would be pressure to exempt from the tax certain sectors of the economy for technical, political, and economic reasons. These include some professional and medical services, the housing sector, financial institutions, and government sector purchases. Purchases of food, clothing, and insurance also were cited as potential exempt purchases. Overall, the report estimates that the tax base

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## County Government

**INSIDE DUPAGE COUNTY: *Structure and Performance*.** The Summary Report of the Dupage Intergovernmental Task Force. Maxine Hansen, Chairperson, 28 Sterling Circle, #302, Wheaton, Illinois 60187, 1992. 34 pp.

The task force assessed and made recommendations for improvement of the functions and delivery of services by municipal, county, township, and special district governments. Focusing on the relationships between structure and performance of local governments, the task force examined fire and police services, libraries, sanitary wastewater, human services, streets and roads, and parks and recreation. The basic governmental structures were found to be sound. Recommendations for change were made in five areas: (1) a fire control board for planning and dispute resolution; (2) new police dispatching and training arrangements and contracting for unincorporated areas; (3) integration of wastewater collection and treatment; (4) establishment of a human services roundtable and intergovernmental structures for rental and transportation assistance; and (5) intergovernmental contracts for road maintenance and a reexamination of municipal-township fiscal relationships.

## Education Finance

**PUBLIC SCHOOL FINANCE PROGRAMS IN THE UNITED STATES AND CANADA 1990-1991.** Edited by Steven D. Gold, David M. Smith, Stephen B. Lawton, and Andrea C. Hyary. American Education Finance Association and the Center for the Study of the States, Nelson A. Rockefeller Institute of Government, State University of New York, 411 State Street, Albany, NY 12203, 1992. x, 666 pp. (Two Volumes).

These volumes are designed for a wide audience in federal, state, provincial, and local governments in the

United States and Canada to help in understanding the range of options in school finance systems, determining general tendencies and exceptional practices, and learning about standardized information on other state and provincial programs. The report contains overviews of U.S. school revenue patterns (with an update for 1991-92) and approaches to school funding, and a similar overview of the Canadian system; highlights of state descriptions; and individual state and provincial descriptions, which include data on general background, basic support programs, transportation, capital outlay and debt service, special education, compensatory education, gifted and talented education, bilingual education, other categorical programs, state aid for private K-12 schools, prekindergarten education, local school revenue, tax and spending limits, and earmarked state revenue.

## Growth Management

**STATE AND REGIONAL INITIATIVES FOR MANAGING DEVELOPMENT: *Policy Issues and Practical Concerns*.** Edited by Douglas R. Porter. Urban Land Institute, 625 Indiana Avenue, NW, Washington, DC 20004, 1992. 249 pp. \$44. (ISBN 0-87420-731-2)

The Urban Land Institute organized a policy forum to examine regulation of development and growth management, focusing on whether state and regional approaches are desirable and, if so, how responsibilities might be shared. The papers provide an overview of experience with state and regional regulation and summarize the advantages and disadvantages in comparison with local regulation. While public regulation of development has been regarded as a local responsibility, during the last 20 years, federal and state governments have "promulgated environmental regulations that have constrained development decisions of local govern-

ments." A dozen states adopted some form of regulatory control, and several regional organizations have been active in local decisions. Control by other than local entities raises questions about whether communities will be able to protect their character and way of life; whether developers and local governments will be caught up in bureaucratic paperwork and procedures; whether the development process will be constrained from responding rapidly to changing local conditions; and whether private property owners may be subject to controls that will restrict their development options.

## Intergovernmental Relations

**AMERICAN INTERGOVERNMENTAL RELATIONS.** Edited by Laurence J. O'Toole. 2nd Edition. CQ Press, 1414 22nd Street, NW, Washington, DC 20037, 1992. 430 pp. \$21.95. (Order from CQ Press Customer Service, P.O. Box 7816, Edison, NJ 08818-7816. ISBN 0-87187-718-X)

In this edition, O'Toole presents an overview of the themes, concepts, and history of intergovernmental relations. The book contains 38 articles selected from a wide variety of sources, focusing on findings and issues in intergovernmental politics, recent developments in constitutional law affecting federalism, the increasing importance of mandates, and the resurgent roles and responsibilities of state governments.

## Metropolitan Areas

**CITIES WITHOUT SUBURBS.** By David Rusk. Woodrow Wilson Center Press, 370 L'Enfant Promenade, SW, Washington, DC 20024-2518, 1993. xviii, 146 pp. (Order from Johns Hopkins University Press, Hampden Station, Baltimore, MD 21211.)

According to the author, a former mayor of Albuquerque and New Mexico state legislator, "Most urban Americans

are better employed, better housed, better served by transportation systems and public facilities, and live in better environmental conditions than the rest of the world. America's real urban problem is the racial and economic segregation that has created an underclass in many of America's major urban areas." He examines in detail more than 100 metropolitan areas—cities and suburbs—with populations of 200,000 or more. He finds that about half of the nation's large urban areas have severe economic and social inequities, while the other half, through "good timing, good luck, and good public policy," have created more successful communities for all. The author derives lessons and laws for what has happened to urban America since World War II, focusing on specific pairs of metropolitan areas; classifies the areas; and discusses federal, state, and local strategies and citizen initiatives for "stretching" cities, that is, creating cities without suburbs.

**THE IMPACT OF FEDERALISM ON METROPOLITAN STRATEGIES IN AUSTRALIA.** Edited by Christine Fletcher and Cliff Walsh. Federalism Research Center, Australian National University, Canberra, 1992. xii, 284 pp. (Order from ANUTECH, GPO Box 4, Canberra ACT 2601, Australia. ISBN 0-7315-1450-5)

This volume contains the proceedings of a symposium on the reconciliation of Australian federalism with problems of metropolitan planning and the commonwealth's "building better cities" program. The symposium stemmed from political events surrounding Australia's "new federalism" reform process. The symposium participants discussed competing concepts of localism from an international perspective, developing intergovernmental strategies for metropolitan/regional areas, setting boundaries, and intergovernmental administrative arrangements.

**METROPOLITAN GOVERNANCE: American/Canadian Intergovernmental Perspectives.** Edited by Donald N. Rothblatt and Andrew Sancton. Volume One/North American Federalism Project. Institute of Governmental Studies, 109 Moses Hall, University of

California, Berkeley, CA 94720, 1993. 468 pp. \$24.95. (Order from IGS Press, 102 Moses Hall, UC Berkeley, Berkeley, CA 94720. ISBN 0-87772-334-6)

This volume is part of a five-year research project. The authors looked at policymaking for urban development in nine metropolitan regions in the United States and Canada with populations over 800,000 (New York and Los Angeles were excluded). The intent was to determine the extent to which metropolitan regions can be characterized as having distinctive policymaking processes and patterns of intergovernmental relations (especially intermunicipal collaboration) with respect to regional planning and infrastructure. The essays show that, in both nations, lack of federal constitutional jurisdiction over local government has "not prevented either federal government from having a profound influence on the nature of urban development." This influence has been exercised, however, in significantly different ways. In the United States, there are "meaningful sets of relationships" between the federal government and the states and between the federal government and local governments. In Canada, the federal government interacts only with the provinces, and the provinces intervene more heavily in local affairs than do the states.

#### Privatization

**DOING BUSINESS WITH GOVERNMENT: Federal, State, Local & Foreign Purchasing Practices for Every Business and Public Institution.** By Susan A. MacManus. Paragon House, 90 Fifth Avenue, New York, NY 10011, 1992. xxiv, 429 pp. \$39.95. (ISBN 1-55778-515-5)

This is the first practical analysis of purchasing from the government written from the point of view of the private business owner. Based on a survey of more than 3,000 companies across the country, MacManus identifies the reasons why governments have increased reliance on the private sector; presents an overview of federal, state, and local contracting and purchasing practices; presents the business view of the effectiveness of government purchasing practices; ex-

amines the reasons why businesses sell to government and assesses the most common problems; compares business judgments of the performance of governments; and suggests strategies for governments to revamp practices. Technical appendixes include model prompt pay regulations, federal application forms for vendors, and a list of federal and state agencies that help U.S. firms sell to foreign governments and industries.

#### A Fiscal Note

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might cover as little as 53 percent of personal consumption expenditures. Although sector exemptions could reduce the number of filers, exemptions of specific purchases could make collection problems for vendors more difficult and cause enforcement and auditing problems because all exempt purchases would have to be recorded and reported separately. Exemptions would also substantially reduce the tax yield.

After considering a report that examined all of the preceding issues much more exhaustively, ACIR voted not to recommend a VAT. However, its conclusion was based not on the merits of a value added tax, but mainly on a finding that a massive property tax relief program did not justify the enactment of a new and controversial tax. Instead, the Commission recommended an assessment of our total federal, state, and local tax systems, with a goal of evolving a National Fiscal Policy.

Specifically, the report concluded that "this country must evolve a mechanism whereby the impact of all taxes—and major new tax proposals—can be assessed. . . . We cannot afford the luxury of keeping the taxing and spending programs of the several levels of government in separate pockets." This recommendation seems even more valid in today's troubled fiscal times for the federal government.

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